USED AND RECYCLED OIL: PENDING EPA RULEMAKING

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY, ENVIRONMENT, AND SAFETY ISSUES AFFECTING SMALL BUSINESS

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

SECOND SESSION

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USED AND RECYCLED OIL: PENDING EPA RULEMAKING

MONDAY, MAY 19, 1986

House of Representatives, Subcommittee on Energy, Environment, and Safety Issues Affecting Small Business, Committee on Small Business,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2359-A, Rayburn House Office Building, Hon. Charles W. Stenholm (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN STENHOLM

Mr. Stenholm. Good morning.

This meeting of the Subcommittee on Energy, Environment, and Safety Issues Affecting Small Business is officially convened this morning to address the existing and potential implications for small businesses and the environment resulting from used oil regulations proposed by the EPA on November 29, 1985.

These regulations were issued pursuant to the Used Oil Recycling Act of 1980, Public Law 96-463, and sections 241 and 242 of the Resource Conservation and Recovery Act Amendments of 1984, Public Law 98-616.

On November 29 of last year, the EPA proposed to amend the hazardous waste regulations by listing used oil as a Superfund waste, and to establish standards for the control and management of recycled oil.

In reaching these preliminary decisions, EPA determined that:

> Used oil typically and frequently contains highly toxic contaminants in significant quantities, that these contaminants are mobile and persistent in the environment, and that used oil is generated in large quantities. Thus, these wastes could pose a substantial present or potential threat to human health or the environment if improperly managed.

The effect of the two proposals, if promulgated, would be to control the generation, transportation, accumulation, storage, treatment, and disposal of used oil by subjecting each of these phases of the used oil management system to full hazardous waste regulations under Superfund.

A large number of small businesses comprising a significant part of the Nation's used oil management system have raised the legitimate observation that by bringing their operations under the provisions of the Superfund law, the EPA may be promulgating the destruction of a viable, functioning national recycling program.

The potential threat for imposing strict, joint and several liability, even when small businesses comply with the final EPA management standards, could result in a severe shift away from recycling by transforming used oil from a commercial product to a commercial liability.

Indeed, it would appear that there is an ever-growing evidentiary record to show that the blanket Federal regulation of used oil as a hazardous waste could harm many voluntary and nonvoluntary State used oil collection programs.

Eight States—California, Massachusetts, Missouri, New Jersey, New York, Oklahoma, South Carolina, and Vermont—to some extent regulate used oil as a hazardous waste. However, most of the used oil regulations issued by these States are far less stringent than EPA's proposed regulations and some have commented publicly that they find EPA's proposals overly rigid and severe and thus potentially difficult to enforce.

For example, California, a State which already regulates used oil as a hazardous waste, maintains a voluntary collection program for its used oil through 2,500 service stations. However, the State has expressed the view that this voluntary program will be hurt if used oil becomes listed as a hazardous waste nationally because of additional reporting, paperwork, and permitting that would be required of used oil collectors.

California has also commented to EPA that many service station operators who now collect used oil under the State's program will stop taking in oil because of increased costs and liabilities they might have to face. The end result of this shock to California's used oil collection program could be drastic, and it seems certain that the volume of used oil which would be returned for recycling would significantly decrease as a result.

In Missouri, used oil regulations exist primarily for monitoring purposes. The State requires the registration of used oil handlers and manifesters. Missouri does not become involved with permits and liability insurance. Missouri commented to the EPA that the Agency's used oil proposals are "unsound" and that because used oil reclamation is a marginally profitable business, EPA's proposal would thus "encourage unsafe disposal methods in lieu of recovery."

New Jersey's used oil regulations are among the strictest in the Nation, but still the State urged EPA not to resort to a blanket listing of used oil, and noted that EPA's proposed regulations would impose extensive burdens on small businesses.

On July 1 of this year, Oregon hopes to fully implement its Opportunity to Recycle Act, which would establish an onroute recycling program for the door-to-door collection of used oil and other recyclable materials from both small businesses and households.

The State has commented to EPA that the Agency's proposed rulemaking may shut the program down even before it begins. Oregon's statute requires minimum, monthly collection of identified recyclable materials in cities with populations of 4,000 or more, and establishes recycling depots at disposal sites. Under the State law, an identified recyclable material is defined as that material which can be collected and recycled for less than or equal to the cost of collection and disposal.

Oregon has informed EPA that the Agency's proposal to list used oil will render it impossible for the State's onroute recycling collection program to pick up small quantities of oil from households and small businesses. The increased costs to oil collection operators resulting from EPA's regulations would not enable used oil to meet the State's criterion for recyclable material. Oregon's Department of Environmental Quality concludes that: "Most collection programs and disposal site recycling depots will drop their recycling activities."

Arkansas, New Hampshire, Wisconsin, and Pennsylvania agree with Oregon. These States have asserted that the EPA proposal would have a negative impact on recycling, would hinder or ruin the collection programs they operate, and have a serious economic impact on the majority of used oil generators that responsibly manage used oil.

In Oklahoma, used oil is regulated as a hazardous waste in some circumstances. However, used oil destined for recycling is exempted from classification as a hazardous waste. The State has found that, as a result of this exemption, used oil recycling has been encouraged, and improper disposal of used oil has lessened.

Wisconsin, a State with an extremely progressive environmental history, is especially strident in its opposition to EPA's proposals. In its comments to EPA, the State said that EPA's proposal for a blanket listing of used oil as a hazardous waste is not justified, and that the proposed management standards EPA has offered are onerous, and lack significant environmental benefits.

The Wisconsin Department of Natural Resources calls EPA's waste oil proposal "unworkable." This comment comes from a State which maintains a collection program for all communities with 3,500 or more residents.

Each such community in Wisconsin is required to set up a collection center for used oil to prevent the disposal of used oil from household oil changes into the sewage system or into landfills.

Pursuant to this declaration by the State agency, the Wisconsin congressional delegation, comprised of six Democrats and five Republicans, liberal and conservative, wrote to EPA arguing that under EPA's proposed regulations, all of the State's collection centers, "would be designated as hazardous waste sites and would incur all the problems associated with such designation. Thus, waste oil would be converted from an asset to a liability."

This final point, expressed so succinctly by my colleagues from Wisconsin, serves, in my mind, as the focal point for looking at the EPA proposal.

How do we as a nation best regulate used oil, and treat it as an asset rather than a liability?

Logic and reason indicate very strongly that the comments EPA has heard from a number of States from across the country—irrespective of whether or not they already regulate used oil as a hazardous waste—are part of a strong, national consensus of opinion against EPA's blanket listing of used oil.

EPA's proposed regulation is, to a great extent, seen to undercut, not foster, environmental protection at the State level.

Before turning the hearing over to our witnesses, I must emphasize that strict adherence to the 5-minute rule will be necessary if we are to conclude today's hearing within a reasonable timeframe.

The number of individuals scheduled to testify is extensive for the purpose of establishing as complete a record on the used oil issue as is possible within the context of a 1-day hearing. I ask each and every witness, therefore, to honor the 5-minute time restriction for your oral testimony. Written statements will be printed in the record in their entirety.

I thank all of the scheduled witnesses for appearing today. Also, I extend my appreciation to the Small Business Ombudsman's Office at EPA for all the assistance and information it has provided the staff in preparation for this hearing.

Mr. Combest.

Mr. **Combest**. Mr. Chairman, thank you.

I have no statement.

Mr. **Stenholm**. Next my colleague from Louisiana, Mrs. Long.

OPENING STATEMENT OF HON. CATHY (MRS. GILLIS) LONG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mrs. **Long**. Thank you, Mr. Chairman.

I thank our distinguished subcommittee chairman, Congressman Stenholm, for holding this hearing. This investigation comes in response to the numerous calls and letters we have received from States, small businesses, trade and insurance associations, and environmental groups who will be affected in some way or other by the EPA's proposed ruling.

EPA's proposal will affect the owners and operators of service stations, other generators of used oil, the transporters of this oil, and the companies that operate recycling facilities, to name a few.

As we discuss the pros and cons of this issue, we will examine the ramifications our actions could have on the environment and our energy needs. We will examine the dimensions of the problems as the participants provide insight and suggest possible solutions.

I join with the other members of our subcommittee in welcoming all the witnesses who will share their expertise with us.

Thank you, Mr. Chairman.

Mr. **Stenholm**. Thank you, Mrs. Long.

Next we will hear from our first witness, our close friend and colleague, Hon. Ike Skelton of Missouri, a longtime leader on this issue in the Congress.

Ike, welcome.

OPENING STATEMENT OF HON. IKE SKELTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

Mr. **Skelton**. Thank you, Mr. Chairman.

I do appreciate this opportunity to share a few thoughts and comments with you. I would like to commend you for holding this hearing.

This is on a unique subject, a unique segment regarding the regulation of used oil. What is unique about it is that it is a valuable asset, reusable, and it is generated by everyone, everyday.

There is currently a recycling system in place which handles nearly 57 percent of the more than 1 billion gallons of used oil generated each year. Unfortunately, the remaining 430 million gallons of used oil are disposed of improperly—into sewers, backyards, or even into the trash. While the pressures to recycle waste oil for energy conservation and economic purposes have eased somewhat, the need to dispose of the waste oil safely in our environment is evergrowing. Obviously, we must encourage participation of recycling.

That is what I wish to address today.

In 1976 EPA was tasked with regulating used oil. Today you will take a look at the resulting regulations and the impact they will have on small businesses. In my home State of Missouri, we are all too familiar with the consequences of improperly disposed waste oil. However, my concern is that when the EPA lists used oil as a hazardous waste under RCRA, it automatically becomes a hazardous substance for the purpose of Superfund. As a result of that, strict liability is imposed upon those handling used oil.

It is important that we give serious consideration to the impact that Superfund will have on the existing oil recycling system. If we are not very careful, Government policy, no matter how well intentioned, might end up doing more harm than good.

Let me give you an example.

I was chairman of this subcommittee 3 years ago as you know. I held a hearing on hazardous waste disposal in the Los Angeles basin area. One of the most alarming things we learned at that hearing is that the more stringent the disposal requirements the less hazardous waste is disposed of properly. Rather alarming, but that is what happened.

That is a direct indication of a policy failure and one that we should learn from. We are depending on a largely self-enforcing system.

Strongly coerced cooperation drives some generators underground and could drive lawful disposers/recyclers out of business. When that happens, you have serious troubles.

Mr. Chairman, what the amendment that you and I offered to Superfund attempts to do, and what the regulations should also do, is make the proper recycling of used oil so attractive that collectors and generators will want to comply.

As long as a collector/recycler disposes of used oil in a Government-certified way he would be free of Superfund's strict liability. We have married two desirable policies: Conservation and environmental protection.

Let me also point out that if at any time he fails or refuses to comply with the prescribed requirements, then the full force of Superfund would be in effect. Rather than to attempt to hold each used oil handler under Superfund's strict liability and potentially creating a huge class of careful and anonymous dumpers Mr. Chairman, our original amendment created a strong incentive to come into compliance with management standards for recycled oil. However, during floor debate, concerns were expressed regarding provisions for proper clean up should a spill occur.

Mr. Chairman, as a result, language was included in the amendment which, in addition to requiring compliance with EPA's rules, mandates that the recycled oil be treated in a way that renders the oil harmless.

While this is a laudable objective, it is an impossible standard to meet—even if one were dealing with virgin oil. I would point out that, adequate authority already exists under several sections of RCRA for EPA to respond to releases of used oil that pose threats to human health and the environment.

While we are waiting for this issue to be resolved in the conference committee, I am hopeful that this subcommittee hearing will have some impact on those results and that what you do here today will send them a strong message.

Finally, Mr. Chairman, I would say that, clearly, the collectors and waste oil recyclers would be the major beneficiaries of a policy that favored waste oil recycling, but we should not forget that there are a whole host of small businesses for whom waste oil is a very necessary but incidental byproduct of their industrial process.

With the chairman's permission, I would like to introduce Ilona Hogan, who has joined me today and who represents the Alliance of Metalworking Industries. I believe their industry illustrates the type of incidental user that will have problems under current proposals. Let me point out that the President of the National Tooling & Machining Association, Dick Carr, is from my district and Jim Sheely, who is on the executive board of this association, is also from Missouri. I believe that the subcommittee would benefit from testimony that she will offer for the record at this time.

Mr. **Stenholm**. Thank you, Ike.

Ms. Hogan, we welcome you at this time.

TESTIMONY OF ILONA M. HOGAN, EXECUTIVE DIRECTOR AND WASHINGTON COUNSEL, ALLIANCE OF METALWORKING INDUSTRIES

Ms. **Hogan**. Thank you, Mr. Chairman and thank you, Mr. Skelton.

I know that you are familiar with the composite groups that make up the Alliance of Metalworking Industries. We wanted to go on the record to express our appreciation both to you and to Mr. Skelton for your efforts on the Superfund amendment and to let you know that we testified before EPA in January on their proposed used oil regulations and opposed the listing of used oil.

As a result of our testimony, EPA has gone back to the drawing board and reopened the hearing record of those hearings.

As a result, some of our constituent organizations have gone back and tried to get the analytical technical data which EPA feels it needs and our effort this morning is to ensure that that data which has become available is put into your hearing record for your perusal, along with our statement in January.

Mr. **Stenholm**. Without objection, your entire statement will be made part of the record.

Mr. **Skelton**. May I add a word of commendation to you for holding this hearing. This is a serious issue and would have a tremendous fallout effect, if it is not done correctly, to small businesses, all across America.

Thank you.

[Ms. Hogan's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF ILONA M. HOGAN, EXECUTIVE DIRECTOR AND WASHINGTON COUNSEL, ALLIANCE OF METALWORKING INDUSTRIES

Good morning Mr. Chairman and Members of the Subcommittee, my name is Ilona M. Hogan. I am Executive Director and Washington Counsel for the Alliance of Metalworking Industries. We very much appreciate this opportunity to join Congressman Skelton to offer a few comments on the proposed used oil and recycled oil regulations issued by EPA last November.

Our industry is composed of small metalworking manufacturers. These contract manufacturers constitute thirteen metalworking sectors in which the average plant has about 58 employees. Although truly representative of small business, their total influence on the manufacturing economy is far-reaching. While some companies produce end products and/or catalogue items, most companies are suppliers to a wide variety of manufacturers whose products are found in practically every market in this country.

Major customers include industries such as aerospace, defense, automotive, appliance, construction, equipment, energy, electronics, agricultural equipment, nuclear, transportation, and recreation.

Included in AMI's membership are the National Screw Machine Products Association, Metal Treating Institute, Forging Industry Association, American Metal Stamping Association, Spring

Manufacturers Institute, Industrial Fasteners Institute; and as Associate Members, the American Gear Manufacturers Association, Hand Tools Institute, Industrial Heating Equipment Association, Tooling & Manufacturing Association, American Die Casting Institute, Steel Service Center Institute, and the National Tooling and Machining Association.

Member companies of the Alliance of Metalworking Industries represent a large percentage of metal manufacturing firms designated to be "small quantity generators" under the Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act (P.L. 98-616).

In anticipation of new responsibilities for metalworking companies under the 1984 RCRA amendments, AMI has worked closely with the Environmental Protection Agency in its efforts to educate newly-regulated small quantity generators.

In the course of these cooperative efforts, we have found that small quantity generators are, in fact, already being regulated by EPA proposals which impact both large and small quantity generators alike, including for example, the proposed used oil regulations.

On January 16, 1986, AMI testified during public hearings and later submitted detailed comments to EPA on the used oil proposals. In the interest of time, we request that our comments to EPA be included in this hearing record in their totality. In short-form summary, AMI opposed the listing of used oil as a hazardous waste but supported the management standards for recycled oil. Our opposition to the listing of used oil was based on our perception that EPA had not based its determination upon sufficient analytical data nor had it fully addressed the alternatives to listing. We were pleased, therefore, to see that EPA on March 10, 1986 made available additional data and requested additional comments on issues raised during the public hearings.

Similarly, we are pleased that you, Mr. Chairman, and Mr. Skelton have recognized the importance of this issue to the small business community and are willing to provide a Congressional forum to air these concerns.

Our members are committed to compliance with applicable regulations. Their commitment can be encouraged and greatly supported by a regulatory scheme which presents compliance regulations in a clear, concise, and easily understood manner.

Thank you, again, for this opportunity to submit our written comments on proposals which are of great interest to our members.

AMI
Alliance of Metalworking Industries

1100 Seventeenth Street, N.W
Suite 1000
Washington, D.C. 20036
202/223-2431

February 5, 1986

Docket Clerk
Office of Solid Waste
(WH 565-A)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: Docket No.3001/Listing of Used Oil
Docket No.3014/Standards of Recycled Oil
Docket No.3004/Burning of Waste as Fuel

Gentlemen:

These comments are submitted on behalf of the Alliance of Metalworking Industries (AMI) and supplement the oral testimony presented at the Public Hearing held in Washington, D.C. on January 16, 1986.

Our industry is composed of small metalworking manufacturers. These contract manufacturers constitute thirteen metalworking sectors in which the average plant has about 30 employees. Although truly representative of small business, their total influence on the manufacturing economy is far-reaching. While some companies produce end products and/or catalogue items, most companies are suppliers to a wide variety of manufacturers whose products are found in practically every market in this country.

Major customers include industries such as aerospace, defense, automotive, appliance, construction, equipment, energy, electronics, agricultural equipment, nuclear, transportation, and recreation.

Included in AMI's membership are the National Screw Machine Products Association, Metal Treating Institute, Forging Industry Association, American Metal Stamping Association, Spring Manufacturers Institute, Industrial Fasteners Institute; and as Associate Members, the American Gear Manufacturers Association, Hand Tools Institute, Industrial Heating Equipment Association, Tooling & Manufacturing Association, American Die Casting Institute, Steel Service Center Institute, and the National Tooling and Machining Association. Total employment in these thirteen metalworking sectors is more than 500,000 persons in nearly 20,000 plants with a total sales volume in excess of $57. billion annually.

Members

American Metal Stamping Assn
27027 Chardon Road
Richmond Heights, Ohio 44143
216/585-8800

Forging Industry Assn
55 Public Square
Cleveland, Ohio 44113
216/781-6260

Metal Treating Institute
1311 Executive Center Drive
Tallahassee, Florida 32301
904/878-6185

National Screw Machine
Products Assn
6700 W. Snowville Road
Brecksville, Ohio 44141
216/526-0300

Spring Manufacturers Inst
380 West Palatine Road
Wheeling, Illinois 60090
312/520-3290

Member companies of the Alliance of Metalworking Industries represent a large percentage of metal manufacturing firms designated to be "small quantity generators" under the Hazardous and Solid Waste Amendments of 1984 to the Resource Conservation and Recovery Act (P.L. 98-616).

In anticipation of new responsibilities for metalworking companies under the 1984 RCRA amendments, AMI has worked closely with the Environmental Protection Agency in its efforts to educate newly-regulated small quantity generators.

To that end, AMI sponsored a March 1985 Washington Conference on Hazardous Waste Management for Small Quantity Generators. AMI has also cooperated with EPA consultants in the development of EPA's education/assistance program and metal manufacturing fact sheet to assist industry members in complying with the new manifesting requirements of the RCRA amendments.

In the course of these cooperative efforts, we have found that small quantity generators are, in fact, already being regulated by EPA proposals which impact both large and small quantity generators alike.

For example, since small companies have been included within the parameters of the 1976 Resource Conservation and Recovery Act, i.e. since November 8, 1984, our monitoring of EPA activity on this issue has disclosed at least eleven different RCRA-related regulatory proposals which impact some of our member companies. Parenthetically, at a recent meeting with EPA's new Small Business Ombudsman, she disclosed that her office monitors some 25 EPA regulations which impact small business, albeit not all RCRA-related.

However, the eleven RCRA-related proposals which we have identified as potentially impacting small metalworking concerns include:

° Burning of Waste as Fuel (Used Oil Generated by Small Quantity Generators) 50 FR 1684; 1692 (January 11, 1985); 50 FR 19956 (May 13, 1985); 50 FR 49163 (November 29, 1985)

° Identification and Listing of Hazardous Wastes (Spent Solvent Mixtures) 50 FR 18378 (April 30, 1985); 50 FR 53315 (December 31, 1985)

° Notification Requirements for Owners of Underground Storage Tanks, 50 FR 21772 (May 28, 1985); 50 FR 46602 (November 8, 1985)

° Tank Systems Storing or Treating Hazardous Wastes, 50 FR 26444 (June 26, 1985); 50 FR 51264 (December 16, 1985)

° Final Codification Rule (Small Quantity Generators) 50 FR 28701 (July 15, 1985)

° Identification and Listing of Hazardous Wastes (Spent Solvents and Distillation Bottoms), 50 FR 30908 (July 30, 1985)

° Small Quantity Generators, 50 FR 31277 (August 1, 1985)

° Identification and Listing of Hazardous Wastes (Spent Pickle Liquor from Steel Finishing Operations) 50 FR 36966 (September 10, 1985)

° Tank Systems and their Role in Reclamation Operations, 50 FR 51264 (December 16, 1985)

° Recycled Used Oil Standards, 50 FR 49212 (November 29, 1985)

° Identification and Listing of Hazardous Wastes; (Used Oil) 50 FR 49258 (November 29, 1985)

During the public comment periods on these various RCRA-related proposals, AMI participated in public hearings and submitted to EPA comments suggesting that the combined impact of these regulatory efforts on small quantity generators be addressed during the course of the rulemaking on the SQG provisions rather than, as is presently being done, to regulate SQG's peripherally in the course of rulemaking intended to affect large quantity generators of hazardous waste already subject to EPA regulation under the original provisions of the Resource Conservation and Recovery Act of 1976.

The purpose of such a request is to simplify and clarify the compliance procedures for small metalworking firms with, on average, less than 30 employees per plant. Just as these firms do not employ an in-house chemical engineer to identify potentially hazardous wastes, they are unable to expend manufacturing resources to track the regulatory maze of environmental protection.

Just as EPA is attempting to facilitate its education assistance programs to small quantity generators, we felt it to be imperative that a similar procedure of simplification and clarification be utilized in the formulation of regulations impacting these small businesses. With small generators being impacted by RCRA, OSHA, DOT regulations and individual State laws, it is clearly unfair to require these small companies to monitor all EPA rulemaking in order to determine when a new rule may impact a particular small quantity generator.

We are pleased to relate that, in fact, our prior comments and suggestions have been not only heard, but heeded, by the Office of Solid Waste. Since August of last year, we have been working with EPA's private sector consultants who have been charged with the task of assessing and analyzing the combined potential impact of various current and proposed RCRA regulations on small quantity generators and to identify opportunities for RCRA requirements to be tailored accordingly. To achieve that purpose, our industries again cooperated in this effort by opening ten plants in Ohio and Pennsylvania for site visitations during the months of October and November, 1985.

Because of these ongoing and continuing efforts on our part as well as on the part of the EPA consultants, we hope that, upon publication of the consultant's final report, we would be able to supplement this submission with AMI's observations on these factfinding results. We do expect the exercise to be instructive not only to EPA but to our members as well with respect to their RCRA responsibilities. Certainly, no final regulations should be promulgated until the results of these industry studies are completed.

Most importantly, we strongly urge that the first year of enforcement, subsequent to any effective dates, be considered a learning period for both EPA inspectors and newly regulated industries. Thereafter, enforcement should be conducted in a spirit of on-site consultations for improvement of compliance in the interest of the commonweal. Our suggestion here stems from the prevailing attitude during the October-November site visitation in which it was clear that small companies are seeking information on compliance procedures once they are adequately forewarned of regulatory requirements applicable to their individual establishments.

With that bit of history on AMI's past, present and future participation in these regulatory proceedings, our comments on the specific proposals under consideration follows.

In general we believe the Agency has made a commendable effort to propose a regulatory framework which balances the dual Congressional mandates of (1) protecting human health and the environment and (2) minimizing to the greatest extent possible the regulatory burden of the RCRA statute on newly-regulated small businesses.

I. Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces (50 FR 49163)

AMI submitted comments on Burning of Wastes as Fuel (Docket No. 3004) on June 11, 1985. In accordance, with the request at 50 FR 49249, those comments are being re-submitted with this statement so they may be considered in conjunction with the used and recycled oil proposed regulations issued on November 29, 1985.

We would note, however, that our suggestion that the January 11, 1985 proposed regulations be considered with reference to the combined regulatory impact of other RCRA regulations on small businesses appears to have been recognized by the Agency. We applaud the effort to streamline these impacts and we highlight the fact that EPA has decided to modify its proposal, in part due to the public comments. As stated by EPA at 50 FR 49178,

"our re-evaluation of available data indicates that few small quantity generators are presently mixing hazardous waste with used oil...actual contamination at the generator site... probably results from inadvertent, and perhaps unavoidable, contamination during use of the oil or handling of used oil...In fact, all data indicate that collectors and processors are the principal source of hazardous waste contamination."

II. Identification and Listing of Hazardous Waste; Used Oil (50 FR 49258)

AMI does not believe that used oil should be listed as a hazardous waste. The listing of used oil as a hazardous waste automatically subjects used oil to the reporting requirements of RCRA and the strict, joint and several liability provisions of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Superfund).

EPA's determination that used oil "poses a substantial present or potential hazard to human health or the environment, when improperly managed" is based upon evidence which is insufficient to justify such a determination.

Although EPA states that its detrmination is based upon analytical data from "approximately a thousand used oil samples," no evidence is presented to substantiate whether these samples are representative of the used oil produced by the used oil generator universe. Indeed, EPA states at 50 FR 49265:

> The Agency recognizes that significant numbers of used oil handlers may wish to petition the Agency for a delisting, especially since non-hazardous used oil will not be subject to regulatory control. Some generators may well, due to their generation and handling procedures, generate relatively clean used oils.
>
> EPA considered an approach that would involve setting concentration limits for specific constituents of concern. Used oil that did not exceed these concentration limits would be exempt from regulation as a hazardous waste. . .

Because many AMI member companies would be among those submitting delisting petitions AMI believes that EPA has not addressed sufficiently or exhaustively the alternatives to listing which the Agnecy has dismissed as "not feasible at this time." Appropriate concentration limits can be established and problems relating to implementation can be resolved by cooperative efforts. Even those industry sectors which express no objection to listing do so only because listing clarifies the uncertainty now prevalent as to treatment of used oil.

In view of the above, AMI urges EPA to withdraw its proposed listing of used oil as a hazardous waste at this time. EPA does not have to list this product as a hazardous waste in order to manage it, witness the proposed management standards for recycled oil.

In the alternative we recommend that EPA consider listing used oil as a hazardous waste only when mixed with other hazardous wastes, or when the oil is destined for disposal. Recycled used oil, on the other hand, should not be listed as a hazardous waste.

With respect to proposed modifications to the mixture rule dealing with mixtures of used oil and other materials, it would be helpful if the Agency could provide greater guidance as to the use of the term "mixture", especially as it relates to a common condition found in the precision metalworking industry.

The use of "floor dri" to soak up de minimus amounts of lubricating oil or coolants which spill, drip, spray, or otherwise escape from the machines used by our members, is a universal situation in the metalworking industries.

Although the virgin "floor dri" consists of solid granular material, such as clay or sand, when adulterated with oil dripped from machines, the adulterated "floor dri" becomes an incidental mixture of a hazardous waste and a non-hazardous solid waste. In our opinion, the adulterated "floor dri" should not be classified as a hazardous waste.

Regarding the proposed exemption from regulation for industrial wipers, we agree with the Agency's comments and with the comments submitted by Kimberly-Clark. Members of this industry use great quantities of industrial wipers to wipe oil from hands, face and the parts being manufactured so that adequate mechanical inspection of dimensions and tolerances can be made.

We disagree with the Agnecy's contention that an appropriate concentration level for used oil in the wiper may be desirable or necessary. The usefulness of an industrial wiper is limited by the amount of oil it will have absorbed. Once the level is reached, further use of the wiper brings no benefit and a new wiper is put in use.

We cannot picture any approach to measure the concentration of oil in a wiper which would be practical in an industrial setting. We, therefore, urge the Agency to adopt the industrial wiper exemption as proposed without reference to an appropriate concentration level.

In fact, we cannot understand why the Agency would propose to exempt industrial wipers from regulatory control but not extend the same exemption to the specific situation described above for "floor dri".

We hope that a similar exemption can be incorporated in these regulations for "floor dri" as for industrial wipers.

III. Recycled Used Oil Standards (50 FR 49212)

We are generally pleased with the steps the Agency has taken to regulate used oil that is recycled. The intent of the proposed regulations -- within the overall framework of the Agency's mission to regulate the generation, treatment, handling, storage, disposal, and recycling, of hazardous waste -- as we understand it, is to encourage the recycling/reclamation of used oil as opposed to its disposal; to encourage segregation of waste products - thus making recycling more attractive; to discourage mixing of used oil with hazardous wastes; and at the same time minimize the impacts of any regulatory scheme on small businesses.

It is our feeling that the Agency has proposed regulations which admirably address those goals.

However, there remain serious questions as to the application of the proposed rule, particularly for members of the precision metalworking industries. For example, the membership of the National Screw Machine Products Association is composed primarily of small, family-owned businesses which, due to the nature of their operations, use large quantities of metalworking fluids. For the most part, these fluids undergo vigorous methods of reclamation/recycling on-site in environmentally approved manners.

For background purposes, the following is a simplified description of the use of metalworking fluids in the screw machine industry. Machine tools are equipped with reservoirs which hold quantities of metalworking fluids. These fluids, also called coolants or cutting oils, are directed onto the workpiece to aid in heat dispersal and chip removal. Similar to an automobile's oil filter, this fluid is continually recirculated from the reservoir onto the piece being worked, through some form of on-machine filter, and back to the reservior, to begin the cycle again.

The most common form of reclamation consists of recovery of cutting fluid from a cyclonic or centrifugal spinning of the chips produced by the metalcutting process. This recovered oil is typically subjected to some form of reclamation which could include filtration, settling, magnetic separation of metal fines, screening, etc.

The resultant reclaimed oil, depending on its properties, may be directly reinserted into the manufacturing process, or be supplemented with virgin oil or other additives to restore desired metalcutting properties to the oil.

As is evident from this simplified description, substantial quantities of metalworking fluids, which would be defined as recycled oil, are used by our members.

The majority of our members would be classified as small quantity generators of hazardous waste under the existing 261.5, and would be classified as small quantity recycled oil generators under the subject proposal. Our concern with the proposed regulatory scheme for recycled oil parallels the Agency's in that we encourage our membership to utilize existing technology to reduce the reportable quantities of all hazardous materials, including used/recycled oil. Our comments, then, will focus on those issues which would directly or indirectly add to the quantities of recycled oil which would not fall under various proposed exemptions relative to the amount to be generated per calendar month and the amount allowed to be accumulated and still subject the individual company to the reduced set of requirements proposed in section 266.40 (c).

While we are supportive of the reduced set of requirements being proposed for small quantity recycled oil generators [proposed 266.40 (c)], and applaud the Agency for recognizing that recycling by small business will be encouraged through this reduced set of regulatory requirements, we find that the Agency's understanding of the universe of recycled oils to come under the rule when promulgated appears to discriminate against many environmentally sound and cost effective used oil recycling activities currently used by, or available to, members of this industry. If anything, the proposed regulations seem to indicate a bias toward judging all used oil generation and reclamation by the prevailing standards of the automobile service station industry to the exclusion of other industries.

By proposing separate generation and accumulation limits for recycled oil apart from the levels of generation and accumulation of other hazardous wastes, the Agency is consciously directing users to either on-site or off-site recycling, and away from disposal. We are in complete agreement with this approach both because of our members' concern for protection of the environment and because of the economic advantages of recycling this high-cost material.

We feel, however, that the proposed rule does not adequately address the most common attempts at recycling made by members of this industry, particularly in the proposed accumulation limits for small quantity recycled oil generators.

It is our understanding that oil in the process of being recycled does not count toward the threshold limit while it is being recycled. Once recycled and ready for reuse, or while being stored prior to on-site recycling, that used oil would count toward the threshold.

We do not believe the proposed regulations adequately address the question of which oils are "in process" and which oils are "being accumulated" prior to recycling.

For our members this is a crucial point.

The on-site recycling activities described above result in a minimal amount of generated recycled oil if the recycling activity takes place in a closed loop type system. (See 50 FR 51264 re Closed Loop Tank Systems) However, many of our members, because of the equipment they have available, utilize what can best be described as a "batch-type process".

The Agency must understand that specific cutting fluids are often required when machining specific materials. Cutting fluids with the properties required for precision cutting of aluminum, for example, should not be used in the cutting of steel. Many of our members find themselves in a situation where they will be machining a particular material using a particular cutting fluid; then when the job is complete, they will remove that cutting fluid from the machine and place it in closed containers to await the next job calling for that particular cutting fluid.

Under the regulations as proposed, the used oil (which may or may not require additional recycling prior to its next use) appears to count toward the accumulation limit since it is being "accumulated, collected (or) stored...prior to recycling."

In a job shop which machines a number of different types of materials, utilizing a number of different types of cutting fluids, it is not uncommon to find used cutting fluid being stored in drums while awaiting the next order requiring its use.

In such situations, the company typically uses batch processing of the cutting fluid. That is, the cutting fluid is held until needed and, at that point, is directed through a filtering process which regenerates the oil to a usable level. It is also quite common to regenerate the oil immediately following use, but still store it until needed.

In either case, that oil, because it is, or has been, or will be recycled, would count toward the accumulation limit under the proposed regulations, even though a better description would be that a break has developed in what otherwise would be a closed loop, flow-through recycling process. The only reason it is not flow-through is that a number of different recycling systems would be required, each to handle a particular fluid. The equipment requirements for that would be well beyond the economic resources of any company large or small. The result is that quantities of oil to be recycled on-site are held in proximity to the source of generation pending an appropriate time and opportunity to run it through the batch recycling operation.

With a proposed accumulation limit of approximately 300 gallons (1000 kg), a total of six 55 gallon drums being held in this manner would make the company a large generator. For comparison, a single, large diameter multiple spindle screw machine has a reservoir which typically holds 150 gallons (500 kg) of cutting fluid.

While encouraging recycling of this material resource, an accumulation limit of 1000 kg/300 gallons unduly discriminates against the batch-type operation in favor of flow-through processes. This discrimination against "batch-type" recycling presents serious problems for our members who would otherwise fall well within the limits for small quantity recycled oil generators.

It would greatly assist our members' compliance with any proposed regulation if the agency would state much as was done at 50 FR 51264 that batch-processed reclamation activities, including those using containers, are tied to the manufacturing process and excluded from regulation.

There is ample precedent in existing regulations, specifically section 260.30, Variances from classification as a solid waste, and 261.2 Definition of solid waste, as well as the proposals at 50 FR 51264, which appear to address this concern and give some guidance.

We suggest a slight revision to the proposed definition of recycled oil which would mitigate the problem. We suggest that the proposed 260.10 definition of "Recycled oil" be amended to state that: "Recycled Oil' means used oil that is either burned for energy recovery, used to produce a fuel, reclaimed (including used oil that is reprocessed or rerefined), or otherwise recycled, or that is accumulated, collected, stored, transported or treated prior to being recycled by other than the generator of the recycled oil."

This change would recognize that the oil being held out of the otherwise closed-loop recycling system, but intended for on-site recycling, is still linked to the manufacturing process, and would not count toward the accumulation limit.

Another area of serious concern to our members involves the discussion of mixtures of recycled oil and other materials, specifically the use by members of this industry of "floor dri" as an absorbent to soak up de minimus spills of recycled oil. During discussion of larger quantity generators of recycled oil (50 FR 49230) the Agency states that "absorbent materials soaked with used oil (e.g. such as machine drippings) and used oil spill clean-up materials would both, via the 'mixture' policies,...be subject to RCRA regulation."

Precision metalworking companies use large amounts of "floor dri" to soak up incidental and de minimus amounts of oil which leak, drip, spray, or otherwise escape from the machine during operation. Although proposed 266.40 (c) (3) appears to indicate that such mixtures are allowed for small quantity recycled oil generators as long as the recycled oil portion of the mixture does not exceed 1000 kg, we cannot reconcile the various interpretations found in the proposal as they relate to this situation.

In the same vein, the entire question of "mixtures" gives us concern due to a lack of clear understanding regarding the Agency's use of the term.

Our reading of the proposed rule, and other references to "mixtures" in existing regulations, gives the impression that the Agency is concerned with intentional mixtures, as opposed to the incidental and de minimus mixtures which are common to machine shop operations. Sound waste management practices utilized by our members for metal chips and other scrap, spent solvents, and recycled oils require segregation of wastes. However, due to the various operations inherent in machine shop operations, certain unintentional mixtures occur. Examples of these would be tramp hydraulic oil seeping from the machine tool's lubricating system into the metalworking fluids being circulated through the machine, and small quantities of solvents entering an oil recycling system due to splashes or residue left on parts following cleaning.

Finally, we strongly support the language in proposed 266.42 (e) (2) (iii) wherein the transporter of recycled oil generated by small quantity recycled oil generators would assume the responsibility for ensuring that the collected oil is delivered to an authorized facility. Small generators of recycled oil rarely have the knowledge or information necessary to determine where the material should be sent. That determination is best left to the professionals handling that part of the job. In a like vein, we suggest that the Agency extend the same consideration to transporters of any and all small quantity generators' hazardous waste.

Although not addressed in any great detail in the proposal, we strongly encourage the Agency to bring some level of consistency to the overall regulation of hazardous waste by adopting "gallons" as the base measurement of hazardous waste instead of "kilograms." The reality of the situation is that containers used by the industry are more typically identified as holding a certain number of gallons, such as a 55 gallon drum, a 500 gallon tank, etc. Weight and volume do not relate when one is discussing the various types of waste products. Whereas few operations could identify the weight of a barrel of oil, each could readily identify the volume as "55 gallons."

Our members are committed to compliance with applicable regulations. Their commitment can be encouraged and greatly supported by a regulatory scheme which presents compliance regulations in a clear, concise, and easily understood manner.

We appreciate this opportunity to comment on proposals which are of great interest to our members. We again offer to provide any additional information necessary to promulgate fair and effective regulations, and request the further opportunity to submit supplemental comments for the written record.

Respectfully submitted,

John A. Ross
Chairman

Enclosure

Mr. **Stenholm**. Questions? Mrs. Long.

Mrs. **Long**. No, Mr. Chairman.

Mr. **Stenholm**. Mr. Combest.

Mr. **Combest**. No questions.

Mr. **Stenholm**. You mentioned in your testimony that you have submitted to Superfund conferees a modified version of the House-passed used oil amendment to the Superfund reauthorization bill that I was very pleased to cosponsor with you.

What public benefit do you believe will accrue from this modified language and selection that you have submitted?

Mr. **Skelton**. Well, I think that it will allow people to abide by a reasonable law as opposed to setting an unreasonable law with an unreasonable standard for a hazardous substance.

If you set an unreasonable standard, you are going to have the very same thing that we had out in California. People just won't comply.

You will dry up the recyclers—they will just go out of business and the oil is going to be disposed of down the sewers. You are going to end up thwarting what you really want to achieve so that is why the standards and the definition really must be a reasonable one that can be worked or followed.

Mr. **Stenholm**. Thank you very much, Ike, for your testimony today and more particularly for the work that you have been doing over the last few years on this extremely important problem. We appreciate your appearance here today.

Mr. **Skelton**. Thank you.

Mr. **Stenholm**. Next we will call Mr. Charles Cadwell, deputy chief counsel for advocacy, U.S. Small Business Administration, Washington, DC.

TESTIMONY OF CHARLES A. CADWELL, DEPUTY CHIEF COUNSEL FOR ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

Mr. **Cadwell**. Thank you very much, Mr. Chairman.

I appreciate the opportunity to appear this morning and share with you our views on the used oil issue in particular.

I should let you know that the whole issue of hazardous waste regulation is one that we in the office of advocacy have spent considerable time and energy on in the past year and a half in the course of our working with EPA, among other agencies, and monitoring the implementation of the Regulatory Flexibility Act which requires agencies to consider the impact of proposed rules on small business.

I welcome the hearing this morning and look forward to the views of the other small business representatives who follow me on the agenda.

The used oil rule is one of several important small business rules which have been promulgated or are pending. Among them are the small quantity generator rule regulating hazardous waste, the hazardous waste tank rule, and the underground storage tank rule which is still pending.

We have had extensive discussions with EPA in advance of the March 1986 small quantity generator rule which we believe assisted EPA in fully addressing the environmental requirements at the same time minimizing the cost to small business of that regulation.

We are, however, concerned that the Agency may undermine compliance with this rule in the near future by adding extensive requirements under its hazardous waste tank rule which must be promulgated by June 30.

We think that the small quantity generator rule itself contained adequate standards and will address any environmental risks, so we hope that EPA will seriously consider our comments and consider the risks there.

Also pending is the underground storage tank rule which may have the broadest impact of any of the pending hazardous waste rules applying to small business.

We have been working with EPA over the last year on this rule and we appreciate their cooperation and willingness to share information and analyses with us.

On February 11 of this year, we filed comments with EPA with respect to the used oil proceeding and in our comments we focused on two primary points.

First was the decision to list used oil as a hazardous substance. It is our belief that this listing will interfere with existing reclamation market for used oil and have the effect of increasing the potential civil damage liability both under tort law and under Superfund.

This fear we believe will affect all parties who currently manage or store used oil, particularly collectors and end users.

The listing may well induce end users of used oil to switch to virgin oil reducing the demand for used oil in the first place. This is particularly likely given the current price situation for virgin oil.

In addition, the increased cost of the regulation will likely, according to EPA's own estimates, drive hundreds of collectors out of business. This combination of reduced demand and fewer collection points will decrease the amount of oil which is recycled and if that diminishes, of course, the likelihood of improper disposal increases.

Second, we believe that insurance companies are more likely to deny insurance to businesses who handle something newly labeled as hazardous.

Pollution-liability insurance rates have already skyrocketed. One survey reports that the typical insurance premium for a retail gasoline station has increased about 40 percent in 1985 alone.

Third, we believe that the regulation may cause vehicle maintenance facilities to either stop accepting used oil from do it yourselfers, from making oil changes or perhaps returning used oil to customers afterward.

This course of action would lead to increased improper disposal we believe and I think Mr. Skelton's remarks from his previous hearing bear that out.

We don't believe that EPA has adequately considered the State programs which already regulate used oil in a manner that actually promotes recycling.

Finally, we believe that potential hazard, which is the other side of the equation, from used oil storage spills is close to negligible.

According to the EPA's regulatory impact analysis, the vast majority of the cases resulting in detrimental health effects occurred from the burning of used oil or disposal in landfills.

Of 15,000 incidents since 1970, only 210 were due to storage tank leaks. New requirements on storage tanks from other rules may soon apply, which further safeguards the storage and recycling process.

We do agree, of course, that some unrecycled used oil such as that which is mixed with hazardous waste may require control, but we don't believe that the listing of recycled oil is an appropriate or necessary way to address this hazard. For these reasons, our February 11 comments urged EPA not to list used oil destined for recycling as a hazardous waste.

With respect to the management of used oil that is destined for recycling, we made a couple of comments.

As you know, EPA divides used oil generators into two classes, large and small quantity generators of used oil. Large quantity generators are those that generate over a thousand kilograms of used oil a month, about 300 gallons, and the rule lays out standards for the management of the tanks and containers, some paperwork requirements, and some facility management.

It is important to understand that large and small quantity generators of used oil are not necessarily large and small businesses.

The current definition of a large quantity generator of used oil, in fact, includes many vehicle maintenance facilities which are primarily small businesses. Thus, it is of particular concern to us that the used oil proposal requires large quantity generators of used oil, which are small business in most cases, to have secondary containment for both new and/or replacement tanks.

As we indicated in our earlier comments on a different rule, the secondary containment requirements are of great concern and great expense to small business. Using EPA figures, we believe that the annualized cost of a secondary containment for a 550-gallon tank is about $1,200.

Without secondary containment, the annualized cost of a used oil rule is $250 for the same firm so it is a significant increase in the regulatory burden.

We have urged EPA to weigh the degree of environmental protection against this cost and believe they are doing that with respect to the hazardous waste tank rule and would urge them to extend that consideration to this rule.

According to the EPA's study, the primary benefit of regulating used oil does not come from the secondary containment aspect, but rather from the reduction of improper land disposal and improper burning which are addressed in other rulemakings.

Consequently, we believe that some relaxation of this secondary containment requirement is warranted.

One way to deal with it is to deal with the definition of a large quantity generator. So, and this is particularly important if we maintain the secondary containment approach, the negligible level of risk at issue in this proposal we believe supports an increase in the large quantity cutoff as well as setting a number that is easier for businesses to understand.

We and other groups have suggested this be set at 1,100 gallons instead of 1,000 kilograms, which is about a threefold increase in the level.

The 1,100 gallons is derived from the fact that a common size tank is a 550-gallon tank. Our very, very rough guess is that this would relieve about 35,000 additional generators of the onerous secondary containment requirements.

Finally, I would like to address one important issue that affects this and all future hazardous waste rules and that is the cumulative impact of all the rules being promulgated following the 1984 RCRA amendments.

Most of the businesses involved here are facing EPA regulation for the first time and will be incapable even with the best of intentions of comprehending, planning and then financing compliance unless EPA spends considerable time and effort coordinating the timing and development of these different rules.

EPA has done a lot of education with respect to the small quantity generator rule with publications and their hot line, but particularly when the rules have overlapping and different requirements we believe it is very important if we are to have any compliance at all that some effort be made here.

An example will illustrate the necessity of coordinating these regulations. For a gasoline station in Stamford, TX, which stores oil in nonleaking underground tanks, we estimate that the small quantity generator rule and the used oil rule will cost about $3,000 a year.

When you add to this the underground storage tank rule, the annualized costs range between $4,000 and $7,000 depending on which regulatory option EPA ultimately chooses for the underground storage tanks.

Depending on the option chosen, those costs may be as much as $20,000. These costs are particularly onerous when, as we believe, the risks imposed by these small business facilities are de minimis.

Many small businesses can't afford to implement EPA proposals as they now exist. We estimate that the small gasoline facilities have an aftertax annual profit of about $4,000, so when you combine all these regulations together and add regulatory costs, you get close to the break-even point for many small businesses.

In view of this, we believe that these facts call for EPA to eliminate as much as possible unnecessary regulatory overlaps and apply some standards that address the same risks at lower costs. Thus, we look forward to EPA's consideration of our suggestions, one not to list used oil as a hazardous substance, and two, to increase the levels at which some of the requirements apply.

Thank you for holding the hearing and I will try to answer any questions the subcommittee may have.

[Mr. Cadwell's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF CHARLES A. CADWELL, DEPUTY CHIEF COUNSEL FOR ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION

Mr. Chairman:

Thank you for the opportunity to testify before the Subcommittee on the issue of the regulation of used and recycled oil. The Office of Advocacy has spent considerable time and effort working with the Environmental Protection Agency (EPA) and industry on this rulemaking and other EPA rules. These views represent those of the Office of Advocacy.

We filed comments with EPA on February 11, 1986 regarding the listing of used oil as a hazardous waste and the regulation of recycled used oil, the subject of this hearing. We generally agree with the recycled used oil management rules, recommending several small, but significant, revisions. We disagree, however, with EPA's listing proposal. Our comments are in the public record and describe in detail our concerns.

The Office of Advocacy has targeted the hazardous waste rules as a priority issue to address over the past year. These regulations include the small quantity generators (SQG) of hazardous waste regulation, the hazardous waste tank rule and the underground storage tank (UST) rules. As you may know, we had extensive discussions with EPA regarding the March 1986 SQG rule. In general, EPA's final SQG rule fully addresses the environmental requirements and minimizes the costs to the small businesses.

We should note that the most significant small business regulation on the horizon is the regulation of underground storage tanks (UST). This rule will affect several hundred thousand small businesses with underground petroleum or chemical tanks and will rank among the most costly EPA regulations ever issued. Over the last year, we have been working closely with the EPA on the development of this regulation. We commend the agency for its cooperation in sharing information and analyses.

I. LISTING USED OIL AS A HAZARDOUS WASTE

In our comments we stated that we do not believe that listing used oil, as proposed by EPA, was necessary for the protection of human health and the environment, and that indeed, it may discourage the recycling of used oil and increase the incidence of improper disposal.

First, we believe that the listing interferes with the present market for natural reclamation of used oil. The fear of increased liability will affect all parties who currently manage or store used oil, particularly the collectors and end users. The listing would induce end-users of used oil to switch to virgin oil, reducing the demand for recycled oil. This is especially likely because of the present oversupply and low cost of other fuel relative to used oil. In addition, the increased cost of regulation will likely drive hundreds of collectors out of business, even according to EPA's own estimate. The combination of reduced demand and fewer collection points for used oil will decrease the amount which is recycled. To the extent that recycling activity diminishes, the likelihood of improper disposal increases.

Second, we believe that insurance companies are more likely to deny insurance to businesses who handle newly listed "hazardous" used oil. Pollution liability insurance rates have already skyrocketed. The typical insurance premium for a retail gasoline station increased 40 percent in 1985 alone, according to the Society of Independent Gasoline Marketers of America. The proposed rule classifies a spill of about 12.5 gallons (100 lbs.) of used oil as a reportable Superfund release, notwithstanding the small risk posed by used oil storage.

Many insurance companies already are moving towards an absolute exclusion of pollution liability in their policies and the application of Superfund liability to used oil will only make matters worse.

Third, we believe that the regulation may cause vehicle maintenance facilities to return used oil to customers or to stop making oil changes. This course of action would reduce insurance costs and eliminate regulation expenses incurred by businesses who provide oil changes. However, customers who do oil changes themselves or have used oil returned to them are much more likely to improperly dispose of oil.

Fourth, we do not believe that EPA has considered state programs which already regulate used oil in a manner to promote recycling. A number of states have programs requiring local communities to set up collection centers for used oil to prevent its improper disposal. These states either list used oil as hazardous only when contaminated with regulated substances or give special consideration to service stations and other facilities which safely recycle oil. Indeed, several states with programs oppose the listing. Listing used oil as a hazardous waste would interfere with state programs, particularly by designating municipal and state funded collection centers as hazardous waste sites, possibly subject to Superfund liability.

Finally, we believe that the potential hazard from used oil storage spills is close to negligible. According to EPA's Regulatory Impact Analysis, the vast majority of cases resulting in detrimental health effects occurred from used oil burning or disposal in landfills. Only 210 incidents out of 15,000 since 1970 were due to storage tank leaks. New requirements on storage tanks from other EPA rules may soon apply which further safeguard the storage and recycling process.

We agree with EPA that some unrecycled used oil (e.g., used oil mixed with hazardous wastes) may require control and need to be listed. We do not believe, however, that the listing of recycled oil is an appropriate way to address the hazard of unrecycled and improperly disposed used oil. EPA has another potential way of dealing with this problem, by using the authority to control recycled oil in Section 3014 of RCRA. For these reasons, our comments opposed EPA's proposal for listing used oil destined for recycling.

II. RECYCLED USED OIL MANAGEMENT PRACTICES

We believe that EPA's proposal to regulate the management of used oil destined for recycling sets reasonable standards and is adequately protective of the environment.

I will now address the proposed regulations on the management of used oil destined for recycling.

EPA divides the generators into two classes, large and small quantity generators of used oil. Large quantity generators of used oil (over 1,000 kg/mo. of used oil) must meet certain standards for the management of storage tanks and containers, facility management and manifest recordkeeping requirements. Large and small quantity generators have little resemblance to large and small businesses. EPA's current definition of large quantity generators includes large vehicle maintenance facilities, which are primarily small businesses. The used oil proposal requires large quantity generators of used oil to have secondary containment for new and replacement tanks.

As we indicated to EPA in our September 30, 1985 SQG comments, the secondary containment requirements are of great concern to small businesses. The costs of these requirements, even using EPA figures, are quite high. We urge EPA to evaluate both the degree of environmental protection to be provided by secondary containment and the cost of compliance, as it is for the SQG tank rule. Even without any additional regulation of the storers of used oil, including generators, transporters, recyclers and end-users, the conservative EPA risk estimate is only 3 cancers/year nationwide from the existing management practices for recycled used oil. The entire proposal, of which secondary containment for large quantity generators is only one small part, reduces this number by only 1 cancer/year. The environmental protection, therefore, provided by secondary containment at generator facilities is well under 1 cancer/year, according to EPA's analysis. According to EPA's study, the primary environmental benefit of regulating used oil does not come from this regulation dealing with the risk of spills from the storage of recycled oil, but from both the reduction of improper land disposal and improper burning of used oil, addressed in other rulemakings. Consequently, we believe that some relaxation of the secondary containment requirement is warranted.

The question remaining is, what standards, if any, would be appropriate for large quantity generators of used oil, who are, in fact, small businesses. Again, our SQG recommendations apply. We estimate that most of the SQG facilities with hazardous waste tanks are also large quantity generators of used oil with used oil tanks. In our SQG comments, we recommended that EPA use inspection requirements for aboveground tanks. We also stated that EPA should regulate underground tanks only in connection with the future Subtitle I underground storage tanks (UST) regulations. We believe that this action would allow EPA to make a more informed judgment as to the most environmental and cost-effective standard for both rulemakings, avoid confusion for the regulated industry, and minimize regulatory overlaps and costs. Further, we believe it would be harmful to the environment for EPA to impose, at two separate times, two different regulatory programs addressing underground tanks at the tens of thousands of facilities nationwide.

Additionally, in our comments we raised the issue of the proper setting of the large quantity generator definition, which is important if EPA retains the secondary containment approach. The negligible level of risk at issue in the recycled used oil proposal supports an increase in the large quantity generator cutoff, as well as setting a number that is easy for businesses to understand: 1,100 gallons/mo., instead of 1,000 kg./mo. (roughly 300 gallons). Eleven hundred gallons is equal to twice 550 gallons, a common size tank used by generators.

Our comments also discussed the need to revise the maximum storage time (90 days) and/or the large quantity generator cutoff (300 gallons/mo. to 1,100 gallon/mo.) to allow facilities to accumulate enough used oil for combustion in on-site space heaters. This would provide the generator with a safe and economical method of used oil disposal in the event he cannot find a processor to take his product at no cost. We expect that this will be a particularly acute problem in rural areas under the new regulations. Additionally, commenters have cited other reasons for extending or eliminating storage accumulation time limits, such as the inability to remove oil from storage tanks in winter.

EPA's failure to accommodate the safe practice (as defined by EPA) of used oil combustion could also lead to illegal used oil dumping. We understand that the demand for used oil space heaters at generators is already increasing in advance of the effective date of this rule.

Lastly, with respect to the proposed regulation of collectors, recyclers, and end-users, we believe that the management standards are generally over-restrictive. The small risk of mismanagement warrants very limited requirements. Even those environmentally conscious states which regulate used oil management have far less burdensome regulations than this proposal. As regulations increase the cost of operating these firms, oil recycling will decrease, and, thereby, improper disposal increases.

III. THE CUMULATIVE IMPACT OF HAZARDOUS WASTE REGULATIONS

I would like to raise one important issue that affects all future and existing hazardous waste rules. It is widely recognized that regulations that affect small business must be developed in recognition of the special needs and regulatory capability of the owners, and the respective risks involved. These businesses are most often facing EPA regulation for the first time and will be incapable, even with the best of intentions, of comprehending, planning and then financing compliance, unless EPA spends considerable effort coordinating the timing and development of these different rules. The evidence of this planning to date has been sketchy at best. Before EPA promulgates another rule, it should have a well developed written plan for coordinating the timing and development of future rules so as not to undermine the entire program.

Let me give you an example that will illustrate the necessity to coordinate the issuance of regulations. For gasoline station facilities which store oil in nonleaking underground tanks, Advocacy estimates that SQG and used oil regulation costs alone are approximately $3,000. Total costs of the combinations of regulations including the underground storage tank (UST) rule could range between $4,000 and $7,000 annually and up at $20,000 when leaking petroleum tanks are retrofitted with secondary containment. These costs are particularly onerous because, in most instances, we believe that the risks imposed by these small business facilities are de minimus (see hazardous waste tank and used oil comments included with statement).

We believe that many small businesses cannot afford to implement the EPA proposals as they now exist. We estimate that small gasoline facilities have after-tax annual profits of approximately $4,000. In view of this modest profit, the cumulative effect of these regulations could force many facilities out of business. This finding calls for EPA to eliminate unnecessary regulatory overlaps and apply standards that address the same risks at lower cost.

IV. CONCLUSION

I commend the Chairman for holding this hearing and bringing this important issue to the attention of EPA and the Congress. I welcome any questions that you may have.

FINAL REPORT

ESTIMATE OF TOTAL RCRA COSTS FOR A GASOLINE STATION

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Prepared for:

Kevin Bromberg
Small Business Administration
Office of Advocacy
1725 I Street, N.W.
Washington, DC 20416
(202) 634-6115

Prepared by

Jennie S. DeVeaux and James D. Dickson
Policy Planning & Evaluation, Inc.
8301 Greensboro Drive, Suite 460
McLean, VA 22102
(703) 893-0315

ESTIMATE OF TOTAL RCRA COSTS FOR A GASOLINE STATION

The Hazardous and Solid Waste Amendments of 1984 (HSWA) required EPA (1) to develop regulations for facilities that generate, transport, and manage hazardous waste in volumes between 100 and 1,000 kilograms per month — small quantity generators (SQGs); (2) to develop minimum standards for all hazardous waste tanks; (3) to develop regulations for used oil; and (4) to regulate underground storage tanks (USTs). Because of these statutory requirements, many small facilities will for the first time be subject to regulations under RCRA.

The suggested requirements for SQGs are discussed in the June 26 and August 1, 1985, preambles of the proposed hazardous waste management system regulations. Used oil requirements have been discussed in a November 29, 1985, preamble. Both SQG and used oil standards focus on current generator standards and possible secondary containment rules for tanks. New regulations under UST, which have not yet been fully developed, will emphasize corrosion protection and leak detection.

Since many facilities will be affected by more than one of these regulations at the same time, the differences and overlaps between the regulations may cause confusion and excessive economic burden for some businesses. One type of business in particular that will be subject to the different regulations is the gasoline station. This report compares the costs of the suggested regulations, with emphasis on the economic impact of retrofitting the standards to a prototypical gasoline station.

To determine the impact of retrofitting an existing gasoline station, we estimated the total annualized costs of various combinations of regulations likely to be proposed. Cost estimates for SQG and used oil requirements were obtained from studies by Development Planning and Research Associates (DPRA); Temple, Barker and Sloane; and ICF. The overlap of costs between SQG and used oil regulations is assumed to be

$4, as estimated by SBA.[1] Costs for UST regulations are based on reports prepared for the EPA Office of Solid Waste, although ranges of costs for each technological option are not available. For annualization of all cost estimates, the real cost of capital is assumed to be 12.9 percent. The remaining lifetime of existing tanks is assumed to be 12 years. The expected life of new tanks is assumed to be 30 years for tanks with secondary containment and 20 years for single-walled tanks with corrosion protection. Where costs are available directly from EPA documents, those costs are used. The foregoing assumptions are used to ensure consistency with EPA reports and have not been verified with the industry.

A. INTRODUCTION

Under current regulations, small quantity generators (SQGs) of hazardous waste are exempt from the extensive regulations applying to businessess that handle over 1,000 kilograms per month. The existing hazardous waste regulations for generators and processor facilities are defined in 40 CFR 260-270, promulgated under the authority of Subtitle C of RCRA. Standards for generators are defined in 40 CFR Part 262, while treatment, storage, and disposal facilities (TDSF) are regulated in 40 CFR 264 and 265. As specified in Part 262, generators accumulating hazardous waste for less than 90 days are exempt from the full set of interim status standards (Part 265) and the permitting process in Part 270. However, these 90-day generators are subject to a portion of the 40 CFR 265 rules, particularly regulations pertaining to emergency plans and requirements for container and tank storage.

EPA is considering subjecting small quantity generators to most of the requirements for generators under 40 CFR 262. These regulations will have an even greater economic effect if the SQGs are subject to several other proposed regulations. First, EPA is proposing revisions to hazardous waste tank standards; the critical elements are requirements for full secondary containment and leak detection for all accumulation tanks. Essentially all tanks at SQG facilities are for accumulation, and therefore SQGs may be subject to these rules. Second, the HSWA requires EPA to establish regulations for the management of recycled used oil. EPA is proposing to subject generators of over 1,000 kilograms per month of recycled used oil to modified hazardous waste regulations. Under this proposal, facilities generating less than this amount will not be regulated (except for certain prohibited practices). Finally, the Hazardous and Solid Waste Amendments of 1984 add a new Subtitle I intended to reduce the release of toxic substances into the environment from leaking underground storage tanks (USTs). The substances regulated under Subtitle I are not wastes -- they are commercially valuable raw materials or products. The statute specifically includes substances covered under the Comprehensive Environmental Response, Compensation and Liability Act (1980) and petroleum but excludes hazardous wastes regulated under Subtitle C. The similarities and differences in the three sets of regulations are detailed below.

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[1] SBA Office of Advocacy memo, December 1985, Table 2, p. 2.

B. PROPOSED REGULATIONS

On August 1, 1985, EPA proposed amendments to the Federal Regulations that would, among other things, subject small quantity generators to regulation under RCRA. Used oil generators may also be subject to RCRA regulations, as discussed in the draft preamble.

1. Small Quantity Generators (SQGs)

Although small quantity generators of hazardous waste are currently exempt from most of the requirements of Subtitle C of RCRA, the HSWA requires that EPA develop standards for SQGs producing between 100 and 1,000 kilograms per month. If EPA fails to develop regulations, that statute will impose the following standards (known as the "hammer" provisions):

- All treatment, storage, and disposal of hazardous waste must occur at permitted TSDF facilities.
- Generators of 100-1,000 kilograms per month may store hazardous waste up to 180 days without having to obtain interim status or a RCRA permit (270 days if waste is shipped over 200 miles and no more than 6,000 kilograms is stored).
- A copy of the Uniform Hazardous Waste Manifest must accompany all off-site shipments.

EPA is proposing (Federal Register, August 1, 1985, p. 31278) to incorporate these standards as well as most of the CFR 262 standards for larger quantity generators, including the need for an EPA identification number and shipping manifests (Table 1). However, SQGs may be exempt from biennial reporting.

The proposed regulations may also subject SQGs to the current 40 CFR 262.34, the generator accumulation time requirements. Under existing regulations, all generators storing more than 1,000 kilograms of hazardous waste less than 90 days in accumulation tanks must comply with only a limited subset of Part 265 interim status requirements. If SQGs become subject to regulations that currently apply to LQGs, they would also be subject to these Part 262.34 requirements; however, the accumulation time for SQGs would be lengthened to 180 days (270 if transporting over 200 miles).

Moreover, the HSWA requires EPA to address the storage and treatment of hazardous waste in tank systems, including accumulation tanks. The critical requirements here will be for full secondary containment and leak detection for all tanks and ancillary equipment currently subject to the Part 262 regulations. Of particular importance to small quantity generators are the proposed revisions to generator standards, specifically Part 262.34, the accumulation time regulation. EPA believes there is little difference in risk to human health and the environment between 90-day accumulation tanks and other storage tanks and is therefore proposing that accumulation tanks also be subject to the more stringent regulations. The proposed requirements for

TABLE 1: PROPOSED SQG AND USED OIL REGULATIONS

SMALL QUANTITY GENERATORS (100 - 1000 kg/mo)	RECYCLED OIL REGULATIONS LARGE QUANTITY GENERATORS (LQGROs) (more than 1000 kg/mo)
Minimum Requirements under HSWA:	Regulated under 266
o Disposal only at permitted treatment, storage and disposal facilities	
o No permit required for accumulation time less than 180 days (270 if over 200 miles from TSDF)	
o Manifest must accompany off-site shipments	
EPA likely to subject SQGs to most of Part 262 standards for generators	EPA likely to subject LQGROs to most of Part 262 standards for generators
262 GENERATOR STANDARDS	266.41 GENERATOR STANDARDS Similar to 262 standards:
262.12: Identification number	Identification number
MANIFEST REQUIREMENTS (SUBPART B)	MANIFEST REQUIREMENTS
262.20: General requirements 262.21: Manifest aquisition 262.22: Number copies (one or more) 262.23: Using the manifest	Same as Subpart B standards, unless generators enters into written agreement with permitted recycler (one-time signed contract)
PRE-TRANSPORT (SUBPART C)	PRE-TRANSPORT REQUIREMENTS
262.30: Packaging	Packaging
262.31: Labeling	Labeling
262.32: Marking	Marking
262.33: Placarding	Placarding
RECORDKEEPING (SUBPART D)	RECORDKEEPING
262.40: Records kept 3 years	Shipment records kept 3 years
262.41: Possible EXEMPTION from biennial reporting	Possible EXEMPTION from biennial reporting
ACCUMULATION TIME 262.34 REVISED BELOW	ACCUMULATION TIME EXEMPT FROM REVISED 262.34

262.34 ACCUMULATION TIME under PROPOSED HAZARDOUS WASTE RULES	RECYCLED OIL REGULATIONS: (continued)
(90 DAYS, except for SQGs)	90 DAY accumulation time
1. Containers: must comply with Subpart I, 40 CFR 265.170 - 177	Containers: must comply with Subpart I, 40 CFR 265.170 - 176
Tanks: comply with parts of Subpart J, 40 CFR 265:	Tanks: comply with regulations similar to parts of Subpart J
265.192 (a: 1-4) regulations on leaking tanks	Regulations on leaking tanks (includes requirement to close or replace tank)
265.194 (a-c): general operating requirements	General operating requirements
265.196 (a-e): inspections	Inspections (includes checking oil daily)
265.197 (a-b): closure & post-closure care	Closure (SEE NEW TANKS)
265.198: ignitable wastes 265.199: incompatible wastes	Ignitable wastes (incompatible does not apply)
2. Accumulation tanks require SECONDARY CONTAINMENT (under 265.193 b-c); includes requirement for leak-detection within 24 hours	NEW TANK REGULATIONS subject to: 265.193: SECONDARY CONTAINMENT (Including leak detection) 265.197 (a-b): CLOSURE & POST CLOSURE CARE
3. Dates marked on containers and tanks	
4. Containers and tanks labeled "HAZARDOUS WASTES"	Containers and tanks labeled "RECYCLED OIL"
5. Comply with Subparts C and D, 40 CFR 265, 265.16	Facility Management requirements:
	Similar to Subparts C & D, but simpler, less costly, and more specific to Recycled Oil storage:
Subpart C: Preparedness & Prevention	
- Required equipment	- Required equipment
- Alarm system	
- Fire extinguishers	- Fire extinguishers
- Arrangements with authorities	- Arrangements with authorities
Subpart D: Contingency Plan	Contingency Plan
- Contingency plan	
- Emergency coordinator	- Emergency coordinator
- Emergency procedures	- Emergency procedures
265.16: Personnel training	Personnel training

accumulation tanks under the Hazardous Waste Regulations are detailed in Table 1.

Since EPA is proposing to subject SQGs to hazardous waste regulations currently applicable to LQGs, the proposed revisions to these generator regulations may also be applicable to SQGs. Therefore, generators of 100-1,000 kilograms per month storing waste in tanks up to 180 (or 270) days would be subject to these requirements; SQGs storing waste for longer periods would be subject to Parts 264 and 265, as well as the RCRA permit. The proposed regulations do not allow 90-day accumulators the option of ground-water monitoring because such monitoring would not be feasible without significant contact between the facilities and the Agency.

EPA may further specify that SQGs satisfy all requirements in 262.34 except secondary containment. In the SQG preamble, EPA proposed that no secondary containment be required and set out four additional options for comment:

- A conditional exemption for SQGs with restrictions on the amount of waste and duration of storage and no finding of unacceptable risk to human health and the environment.
- Secondary containment for new and leaking tanks only.
- Secondary containment for all tanks.
- Delay in the effective date for any partial or complete requirements for secondary containment.

It also indicated it could not propose secondary containment requirements for SQGs before completing a risk assessment. Thus, while it is not clear if secondary containment will be required for SQGs, it appears that in neither case will ground-water monitoring be applicable to SQGs. The Agency may also assess the need to install corrosion protection for 90-day accumulation tank systems.

2. Recycled Oil

The HSWA also requires EPA to regulate generators of used oil in order to protect human health and the environment. Used oil is considered recycled oil if it is recycled on-site or accumulated and shipped to an off-site recycler, and generators of recycled oil will be regulated under a new Part 266, which includes referenced Parts 262, 275, and 270 of 40 CFR. The proposed regulations are based on the requirements for generators of hazardous waste in 40 CFR 262 but are modified to take into account the unique nature of used oil. As with the hazardous waste regulations, the used oil regulations will be different for small quantity generators of recycled oil (SQGRO) -- that is, generators that accumulate less than 1,000 kilograms per month -- and large quantity generators of recycled oil (LQGRO).

Under this proposal, recycled oil has a total accumulation limit of 1,000 kilograms per month, separate from the hazardous waste limit. A generator could accordingly be regulated both as a SQG of hazardous waste and as a large quantity generator of used oil if it produces more than 1,000 kilograms per month of recycled oil. Further, any time more than 1,000 kilograms of recycled oil is accumulated, the generator moves into the LQGRO category. In addition, the calculation of the amount of recycled oil for purposes of determining size category will not be affected if the oil is mixed with nonhazardous waste in any amount. If, however, the recycled oil is mixed with hazardous waste, the total volume of the mixture will be regulated as a hazardous waste.

a. Small Quantity Generators of Recycled Oil (SQGRO)

Under the proposed regulations (Part 266, Subpart E), generators of up to 1,000 kilograms of used oil per month would be exempt from full Part 266 regulations. Instead, they would be subject to a limited set of requirements, including a prohibition on road oiling and standards for installing new underground storage tanks. Further, no formal tracking is required for SQGRO off-site shipments.

Even though SQGROs are not subject to the full administrative and procedural requirements of LQGROs, they will be subject to the same requirements as all operators of underground tanks. The standards for installing new underground storage tanks are based on the "interim prohibition" provisions of Section 9003(g) of RCRA (Subtitle I), which include requirements for corrosion protection. The interim prohibition will be the minimum requirement for new underground storage tanks until full regulations are developed under Subtitle I. When specific recycled oil provisions result in regulations more stringent than those under Subtitle I, EPA proposes that the more stringent regulations will apply.

b. Large Quantity Generators of Recycled Oil (LQGRO)

EPA proposes to subject generators of more than 1,000 kilograms per month of recycled oil to standards similar to the Part 262 requirements for generators of hazardous waste, including the need for an EPA identification number. To adequately control storage tank hazards for recycled oil systems, EPA is also proposing used oil tank regulations similar to the more stringent proposed hazardous waste tank regulations. However, to mitigate the potential economic impact of the new requirements, EPA is considering applying only certain portions of them to recycled oil generators. In Table 1, the regulations for LQGROs are compared with similar regulations for hazardous waste SQGs.

Recycled oil generators that store recycled oil for less than 90 days may not be subject to requirements similar to those for permitted hazardous waste treatment, storage, and disposal facilities, provided they comply with the proposed accumulation standards for used oil generators. These accumulation standards are similar to those for hazardous waste generators and include labeling the tank or container and meeting container and tank standards similar to those referenced in 40 CFR 265, Subparts I and J.

EPA is also proposing that LQGROs comply with requirements for facility management, including emergency planning and personnel training. Although these requirements are similar to 40 CFR 265, Subparts C and D for hazardous waste generators, EPA considers the recycled oil requirements to be simpler, less costly, and more specific to the nature of used oil storage.

In addition, all LQGROs shipping recycled oil off-site would be subject to requirements of Part 266.41 (d), which are based on the Part 262 standards for hazardous waste generators. The proposed regulations include requirements for packaging, labeling, marking, and placarding. The LQGRO must also arrange and keep records of contracts with permitted facilities to have the oil collected and recycled; however, as with SQGs, the generators may be exempt from the biennial reporting requirements. If no contract arrangements are made, the generator must utilize the Uniform Hazardous Waste Manifest, although it is not clear how many copies will be required.

In general, the tank standards in Part 266 are similar to the proposed 90-day hazardous waste tank standards in 262.34, except that used oil may be exempt from secondary containment for existing tanks. The proposed regulations for used oil generators do, however, specify requirements for new underground tanks:

- New tanks would comply with the proposed 265.193 standards for secondary containment and leak detection systems as referenced in the proposed 262.34 requirements.
- When the tank system is closed, all contaminated material must be removed and post-closure activities conducted according to 265.197.

Therefore, EPA is not considering applying the same "interim prohibition" standards for LQGROs as for SQGROs. In general, the new tank standards for LQGROs will be more specific and more stringent than the interim prohibition standards.

C. UNDERGROUND STORAGE TANK

The HSWA add a new Subtitle I governing the storage of regulated substances in underground tanks. The statute requires that regulations be effective and promulgated according to the schedule below:

Type of Tank	Required Promulgation	Required Effective Date
Existing and new petroleum storage tanks	February 1987	May 1987
New nonpetroleum storage tanks	August 1987	November 1987
Existing nonpetroleum storage tanks	August 1988	November 1988

The scheduled three categories of regulation are (1) release detection, prevention, and correction, (2) financial responsibility, and (3) tank installation and construction. Because this is a new body of law, EPA has not formally selected options. The technical options, discussed briefly below, are based on the December 1985 Technical Standards Options Paper.

1. Release Detection, Prevention, and Correction

a. Release Detection

EPA's recommended approach for release detection will be based on broad performance standards rather than on narrower technical standards, because performance standards take less regulatory effort and allow for greater flexibility. EPA's Alternative IV requires that releases be detected within seven days, while Alternative V requires that detection occur within 90 days.

The Agency's decision to choose Alternative IV or Alternative V is significant for small businesses because there are fewer leak detection methods that meet the seven-day standard. Inventory control and quarterly inspection of observation wells may be the cheapest and easiest for tank owners to use, but these methods do not achieve compliance with the seven-day standard. Requiring seven-day or better detection time could delay compliance with the regulation because of unfamiliarity with the technology, problems of availability and reliability, and cost.

b. Release Prevention

Unlike leak detection, which attempts to mitigate the effect of occurring leaks by allowing a prompt remedial response, release prevention is geared to reducing the potential for future leaks from new and existing tanks. Several technical options are available for release prevention:

- Secondary containment (either double-walled tanks or use of tank liners).
- Corrosion-protected, single-walled tank systems allowed under the Interim Prohibition, such as fiberglass and cathodically protected tanks.
- Retirement of old tanks.

As more new tank designs become available, many tank owners replacing their tanks because of age or leakage are voluntarily choosing secondary containment.

For existing steel tanks, however, retrofitting with cathodic protection is much easier and less costly than replacing them with secondary containment. Properly installed and corrosion-protected tanks may adequately prevent releases into the environment. Alternatives IV and V both allow the Interim Prohibition standard of corrosion protection for tanks along with installation, maintenance, and certification requirements.

EPA has noted significant drawbacks to the forced retirement of tanks. In its June 26, 1985, preamble to the proposed Hazardous Waste Tank Regulations, the Agency points out that forced retirement is not a reliable basis on which to predict corrosion-induced leaks in steel tanks. Moreover, corrosion is due to a wide variety of environmental factors and can occur at any age. As a consequence, the Agency may decide not to use this option for its UST regulations. Furthermore, mandatory retirement becomes less important under UST regulation, when leak detection enables owners to discover and correct leaking tanks sooner than under a retirement plan.

c. Release Correction

EPA's preferred approach to release correction is to develop performance-based regulations. Three technical requirements are most often mentioned:

- Removal of leaking material from the tank.
- Notification of the appropriate agency.
- Repair, retrofit, or replacement of the tank.

If the proposed UST rules are based on regulations for hazardous waste tanks, basic closure care will be necessary to close the entire tank system, including removal and decontamination of the tank, ancillary equipment, and any contaminated soil. If the soil is not removable, final capping and ground-water monitoring will be necessary. Under the proposed Hazardous Waste Tank Regulations, post-closure plans will be required for facilities without secondary containment.

2. Financial Responsibility

The HSWA also requires EPA to promulgate regulations to ensure financial ability to take corrective action and compensate third parties for damage caused by leaking USTs. Financial assurance may be provided through third-party guarantees, self-insurance, or state-run pool systems. In general, however, the adequacy and availability of insurance for small businesses to comply with UST regulation is unknown. Also, there may not be a need for financial responsibility after these rules become effective.

3. Tank Installation and Construction

Although no specific technical options have been adopted in connection with the HSWA mandate for tank performance standards, several options might be considered:

- Certification of all tank installations by a professional engineer.
- Development of a nationwide tank installation certification program.
- Varying installation requirements over different ground-water classes.
- Development of standards for new tanks based on existing industry guidelines.
- Inspection of all tank installations.

EPA has considerable evidence that improper installation is a frequent cause of leaks. No matter which leak detection/prevention regulatory approach is chosen, installation standards will be specifically developed.

D. COSTS OF COMPLIANCE

The costs of compliance for a SQG will depend on numerous factors, including the type and quantity of waste, the method of storage, and current regulatory practice. In this section, we review potential costs under RCRA to determine the combined impact of the different sets of proposed regulations on a single prototype firm. The model is a gasoline station that has:

- One spent solvent drum or one underground tank, accumulating less than 1,000 kilograms per month.
- One 500-gallon underground nonindustrial used oil tank, accumulating over 1,000 kilograms per month.
- Three 10,000-gallon underground gasoline storage tanks.

1. SQG and Used Oil Regulations

The costs of compliance with small quantity generator regulations as well as used oil regulations were previously developed by Development Planning and Research Associates, Inc (DPRA). Costs for a regulated SQG assumed that the model firm would not require a permit and would generate spent solvents to be recycled off-site.

The cost of compliance for SQGs under the current hazardous waste regulations would depend on whether the wastes are managed in tanks or containers. It is estimated (on an annual basis) as follows:

SQG with containers	$1,110
SQG with underground tanks	$1,662[2]

An SBA memorandum also estimated costs of compliance with used oil regulations for large quantity generators of recycled oil (more than 350 gallons per month). Assuming that nonindustrial used oil is stored in underground tanks, the annualized cost will depend on whether the tank is leaking or not. It is estimated as follows:

Nonleaking tank	$ 236
Leaking tank	$1,056[3]

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[2] DPRA, December 1985, Addendum Report: SQG Economic Analysis.

[3] SBA Office of Advocacy memo, December 1985, Table 2, p. 2.

Since both the proposed SQG and used oil regulations reference sections of the Part 262 generator standards, some costs may be duplicated. SBA estimated that only $4 should be subtracted from the used oil costs of compliance when determining the combined costs.[4]

If the proposed requirements for secondary containment for all generator tanks are applied to SQGs that store waste in tanks, then these costs must be added. The EPA Office of Solid Waste developed cost estimates for small tank compliance with secondary containment. Costs were based on SQG Tank Population and Compliance Costs, ICF, November 23, 1985. Compliance for a representative 200-gallon underground tank is estimated to have the following annualized cost:

Full secondary containment[5]	$ 528
Leak monitoring unit	$ 336
Leak monitoring O&M	$ 250
	$1,114

2. Underground Storage Tank (UST) Regulations

The proposed UST regulations would affect the three 10,000-gallon underground product storage tanks of our model gasoline station. As mentioned earlier, EPA has not decided upon the technological options for (1) release detection, correction, and prevention and (2) tank installation and construction. However, technological and regulatory options considered for USTs were discussed in the December 1985 EPA Options Paper and include the following:

- Corrosion protection.
- Initial and semiannual tank tightness testing.
- Ground-water monitoring.

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[4] SBA Office of Advocacy memo, December 1985, Table 2, p. 2.

[5] Secondary containment costs include installation of a new tank and piping.

- Improved inventory control.
- Secondary containment.
- Certified engineer's inspection.
- Pollulert (hydrocarbon floating sensor).
- Soil vapor zone monitoring (continuous).
- Forced retirement of old tanks.
- Observation wells (quarterly and weekly inspections).

As shown in Table 2, two optional technologies may be applied to tanks retrofitted with a leak detection system only: corrosion protection or engineer's assessment. The optional technologies would be combined with one of seven mandatory leak detection technologies: improved inventory control, semiannual tank tightness testing, ground-water monitoring, continuous vapor wells, Pollulert,[6] or observation wells (inspected either weekly or quarterly). Table 2 also includes two alternatives to leak detection: full secondary containment or mandatory retirement with replacement by a cathodically protected tank. All operators are assumed to install a piping leak detection system regardless of the system chosen to mitigate tank leaks.

Costs developed for the various technologies being considered for USTs are based on Estimated Costs of Compliance with Proposed RCRA Regulations for Hazardous Waste Storage, Treatment, and Accumulation Tank Facilities (January 1985); Cost Analysis of Compliance with Proposed RCRA Regulations for Hazardous Waste Tank Facilities (Addendum) (June 1985); and Pope-Reid Associates' letter to David O'Brien, January 27, 1986. For determining the annual cost, existing tanks are assumed to be eight years old, with 12 years left in a 20-year life; the real cost of capital is assumed to be 12.9 percent. For forced retirement, costs are annualized over 20 years on the assumption that a new single-walled tank with corrosion protection installed immediately will be

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[6] Pollulert is a proprietary, in-ground sensor set in a well that floats on the surface of the ground-water table. It is used to detect hydrocarbons floating on the surface of the water in the well.

TABLE 2

MATRIX OF TECHNOLOGY COMBINATIONS REVIEWED

Technology	Combination Number[a]								
	1	2	3	4	5	6	7	8	9
Corrosion Protection	x	x	x	x	x	x	x	x	x
Engineer's Assessment Inspection	x	x	x	x	x	x	x	x	x
Piping Line Leak Detector[b]	●	●	●	●	●	●	●	●	●
Improved Inventory Control	●								
Semiannual Tank Tightness Test		●							
Ground-Water Monitoring			●						
Vapor Wells (continuous)				●					
Pollulert					●				
Observation Wells									
Quarterly						●			
Weekly							●		
Secondary Containment								●	
Forced Retirement									●

[a] x = optional for combination; ● = required for combination.

[b] Piping line leak detection is included as a necessary part of all combinations.

retired within 20 years. Retrofitting with secondary containment and leak detection is assumed to require removal of the old tank and installation of a new one; therefore, costs are annualized over the full 30-year life span of the new tank. All other costs are annualized over 12 years on the assumptions that the existing tank is retrofitted and that the equipment will eventually be replaced with the tank.

The annualized costs for retrofitting three 10,000-gallon USTs are shown in Table 3 for each option. Table 3 shows two optional technologies that may be used with leak detection to reduce the incidence of tank leaks (corrosion protection and engineer's assessment), one mandatory technology to detect leaks in the piping, seven potential leak detection technologies, and two alternatives to leak detection (secondary containment and forced retirement). Annualized costs for leak detection options range from $397 for observation wells with quarterly monitoring to $3,997 for observation wells with weekly monitoring. Two alternatives to mandatory leak detection are the requirement for either secondary containment or immediate forced retirement with replacement by tanks equipped with corrosion protection. By themselves, these alternatives have annualized costs of $15,173 (for secondary containment) and $7,897 (for forced retirement). Facilities using either the leak detection options or the alternatives will incur a further annualized cost of $1,064 for piping line leak detection. Retrofitting tanks with corrosion protection and conducting an engineer's assessment could add $941 (annualized cost) to the leak detection options.

3. Combinations of SQG, Used Oil, and UST Regulations

The costs of compliance for combinations of UST, SQG, and used oil regulations are shown in Table 4. SQG and Used Oil Costs alone are approximately $3,000 for facilities which store in nonleaking underground tanks[7]. Total costs of the combinations of regulations

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[7] SBA Office of Advocacy memo, December 1985, Table 4(b), p. 5.

TABLE 3

COST OF UST TECHNOLOGIES PER FACILITY[a]

(Dollars)

Technology	Installation Cost		Other Initial Cost		Annual Operation and Maintenance	Total Annualized Costs per Facility
	Total	Annualized	Total	Annualized		
Corrosion Protection[b]	1,100	185	1,650	276	210	671
Engineer's Assessment Inspection[b]			2,100	270		270
Piping Line Leak Detection[c]	8,250	1,064				1,064
Inventory Control[c]					2,190	2,190
Semiannual Tank Tightness Test[c]					3,120	3,120
Quarterly Ground-Water Monitoring[c]	4,395	567			1,470	2,037[d]
Vapor Wells (continuous)[c]	3,840	495			1,380	1,875
Pollulert[c]	7,500	967			0	967
Observation Wells						
Quarterly[c]	750	97			300	397
Weekly[c]	750	97			3,900	3,997
Secondary Containment[b,e]	110,644	14,658	2,000	265	250	15,173
Forced Retirement[b,f]	49,541	7,454	1,650	233	210	7,897

[a] Assumes three 10,000 gallon tanks per facility.

[b] Costs from ICF, Estimated Costs of Compliance with Proposed RCRA Regulations, January 1985, and Addendum, June 1985.

[c] Costs from Pope-Reid Associates, letter to David O'Brien, January 27, 1986, Table 1, p. 16.

[d] Versar uses $3,200.

[e] Includes leak detection, assumes 30-year life.

[f] Includes corrosion protection. Based on immediate retirement and 20-year life.

TABLE 4

COMBINED COST OF UST, SQG, AND USED OIL REGULATIONS FOR A PROTOTYPICAL GASOLINE STATION[a]

(Dollars)

UST Technology Option Combination	UST[b] + SQG[c] + Used Oil[c]				UST Costs from Table 3[b]
	SQG in Containers		SQG in Underground Tanks		
	Nonleaking	Leaking	Nonleaking	Leaking	
Inventory Control	4,596	5,652	6,225	7,281	3,254
Semiannual Tank Tightness Test	5,526	6,582	7,155	8,211	4,184
Quarterly Ground-Water Monitoring	4,443	5,499	6,072	7,128	3,101
Vapor Wells (continuous)	4,281	5,337	5,910	6,966	2,939
Pollulert	3,373	4,429	5,002	6,058	2,031
Observation Wells					
Quarterly	2,803	3,859	4,432	5,488	1,461
Weekly	6,403	7,459	8,032	9,088	5,061
Secondary Containment	17,159	18,635	19,208	20,264	16,237
Forced Retirement	10,303	11,359	11,932	12,988	8,961

[a] Facility comprises three 10,000 gallon gasoline storage tanks, one 550 gallon used oil tank, and either one 200 gallon underground spent solvent tanks or 500 gallons of above-ground spent solvent containers.

[b] Includes cost of piping leak detector.

[c] SQG and used oil compliance costs from Tables 4(b) and 4(c) in SBA memo dated December 1985.

range from about $2,800 to about $20,000. Total costs are classified according to whether the SQG accumulates hazardous waste in containers or in underground tanks, and whether the used oil tank is leaking or nonleaking. Costs generally increase if SQGs store waste in underground tanks rather than containers since the former may necessitate compliance with the proposed hazardous waste tank regulations for secondary containment and leak detection. Although existing used oil tanks are not likely to require secondary containment, leaking tanks will probably need to be retrofitted, and thus total costs will increase. Even if tanks are not retrofitted, the cost of the combined regulations will range from $4,400 to $8,000, as indicated in Column 3. This economic impact will be very difficult for small retail gasoline stations to bear. We estimate that small gasoline facilities have after-tax annual profits of approximately $4,000.[8] In view of this modest profit, small businesses may be unable to obtain financing for a substantial investment.

D. SUMMARY

It appears that the overlap of SQG, used oil, and UST regulations may result in costs of compliance four times as great as SQG compliance costs alone and far more if UST regulations were to include secondary containment or forced retirement. From the perspective of a small gasoline station, the UST performance standards under Alternative V are preferable to Alternative IV. The much greater time period allowed for quarterly detection gives tank owners a wider variety of affordable monitoring devices to choose from. Further investigation of the environmental adequacy of different options would be useful in determining which combinations of options are less costly and provide equivalent reduction in the magnitude and probability of tank leaks.

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[8] SBA estimate based on information from PMAA, Petroleum Marketing Databook, 1984-85.

Mr. Stenholm. Thank you. Mrs. Long.

Mrs. Long. No questions, Mr. Chairman.

Mr. Stenholm. Mr. Combest.

Mr. Combest. Thank you, Mr. Chairman.

On page 4 of your testimony, you mention, about midway through, that in addition to the increasing cost, the regulation will likely drive hundreds of collectors out of business. For the record, explain what a typical collector might be, and from where a typical collector might get the oil.

Mr. Cadwell. A collector is someone who collects used oil from gasoline stations and other generators. The source of our information on the driving of hundreds of small collectors out of business is EPA's regulatory impact analysis which if I remember the numbers correctly indicated that 313 out of, I think, 740 or so existing collectors would be put out of business by the rules relating to collectors.

Perhaps the people who prepared the EPA regulatory analysis would have a better——

Mr. Combest. A typical location of where the collectors would get their oil would be what?

Mr. Cadwell. A gas station or a small factory.

Mr. Combest. How currently would this collector be disposing of the crude oil?

Mr. Cadwell. My understanding is that the collectors probably then pass the crude oil on to a recycler of some sort, a re-refiner or in many cases used oil is burned in space heaters.

Mr. Combest. I wanted to ask you those things for the record because I grew up in the—my family has been in the wholesale oil business. We were what was referred to as jobbers and leased service stations out and part of our responsibility was selling the oil and obviously in a service station you collect.

A number of people have indicated in further testimony that we will be hearing today that they also will take in the oil from do-it-yourselfers, a service station will take it in, put it in their storage pit for pick up by someone else.

Typically I suppose we are talking about 4 or 5 quarts normally for an oil change from someone in an apartment complex on their own car.

If, in fact, the service station was not capable of taking this, simply storing it for collection later on, obviously it would be easy to do something else with it, to pour it on the grass, in the garbage disposal or into the sewer line. That is easy in small quantities, but combined we are talking about a lot of oil.

So many times it seems to be that the problem of regulating is overregulation to the extent that you totally get away from the purpose of what the regulation was intended for, and I think this is certainly one of these examples of a case where this may be true in that, in reality, the types of regulations that some are asking for in terms of dealing with this, if in fact it is hazardous waste, the end result is going to be that there is going to be much more of it disposed of into the environmental system other than through the collection agencies.

I wanted for the record for you to point that out because you are speaking of the several hundreds of these businesses that in fact would not be able to, and as you have indicated in your testimony, it is obvious as to what is happening in liability insurance, that these companies would not be able to do that in the future.

We will hear testimony later that some people involved in service stations are advising their people not to accept oil until the regulations are finalized.

Mr. CADWELL. Our detailed study of the regulatory cost focused on generators because there are more of them and we have not reviewed EPA's report on cost to collectors, which is the segment that you were speaking of.

Mr. COMBEST. Thank you.

Mr. STENHOLM. SBA has offered valuable information to this committee and to the Congress and I commend you on a fine statement.

You mentioned in your comments the fact that EPA's listing proposal may critically distort the used oil management market.

How would you characterize the data on which SBA makes its conclusions?

Mr. CADWELL. Well, the data—that conclusion is drawn from the several factors that I listed, Mr. Chairman, which several groups following me who represent actual generators and collectors of used oil can speak to.

Key among them though is the fact that the used oil frequently does not have a lot of environmental risk and therefore the decision to list it may not be entirely warranted particularly since one of the primary contaminants from gasoline stations that EPA is worried about is lead.

Since the study, which was done to evaluate the risk of used oil, in, I believe, 1983 or 1984, EPA has implemented several other regulations which reduce dramatically the amount of lead in gasoline by a factor of 10, I believe, when the rules went into effect in January 1986.

So the only point I would add, I think, to the points others will make behind me is that the risk here, we think, is significantly lower than EPA may be estimating and when you weigh that against the cost, the decision to list may be made differently.

Mr. STENHOLM. Pursuing that a little further, the risk factor always has to be taken into consideration. Oregon's Department of Environmental Quality says basically the same thing that you have just said, which is that the potential hazard or risk from used oil storage spills is very negligible. In Oregon's case, the State has advised EPA that Oregon has no history of incidents of environmental damage involving the handling and storage of used oil. Would you share Oregon's assessment that any requirement that substantially adds to the cost of recycled oil management will indirectly increase the risk to human health?

Mr. CADWELL. I think that is the case. That is what we have heard from lots of small business representatives who represent the generators in particular and each of our personal experience. If an oil change costs $10 or $15 now and the cost goes up and you get the oil back at the end of it, it is more likely that you are going to improperly dispose of that oil. I wouldn't know a collector if I bumped into one personally, so it is important that we encourage rather than discourage people who are willing to either take do-it-yourself oil or enable people to handle used oil without the risk of increased liability.

Mr. STENHOLM. SBA, is not favoring turning used oil generators lose by any stretch of the imagination. You favor regulating the management of used oil under the Used Oil Recycling Act of 1980. Could you further explain the SBA position?

Mr. CADWELL. We understand that it is important to regulate the disposal and the recycling of used oil, because it is not something you want to have in the ground water. I don't think any small businesses would suggest otherwise. We find that the bulk of the regulations for the handling of used oil are acceptable or understandable at least in view of the need to regulate it with the exception of, most importantly, the secondary containment requirements, which would require a double tank or the construction of concrete and plastic berm of significant and additional cost to some very small generators.

Three hundred gallons a month is 10 oil changes a day, so it is not a very large generator that we are going to impose significant costs, about $1,200 a year to comply with this new rule.

So that is the one change that we suggested in our comments be made to the proposed management practices.

Mr. STENHOLM. You mentioned in your testimony some of the cumulative effects of this. It is so easy for we in the Congress, individual subcommittees, committees, or individual Members of Congress to look at a problem and suggest a solution to that problem and then not have a full appreciation of the cumulative effect of that.

As you have just mentioned, if used oil is not properly disposed of, it can be a problem.

Do you have anything further you would add regarding the cumulative implications of current and proposed RCRA regulations on small quantity generators or small businesses generally?

Mr. CADWELL. We have prepared a detailed report in February on the total RCRA costs for a gasoline station. I would be happy to make that available to the subcommittee for the record. That provides details on different regulatory options and different kinds of gasoline stations, whether it has above or below ground tanks, leaking or nonleaking and that sort of thing.

Mr. STENHOLM. Without objection, it will be made a part of the record and we appreciate that very much.

Do you have any comments you would make concerning the Skelton revisions to the House-passed CERCLA bill?

Mr. CADWELL. I haven't reviewed it in detail, but I think if EPA were to decide not to list used oil as a hazardous risk tomorrow, I think there would be less need for the amendment. The end results we are interested in are regulations that encourage rather than discourage recycling of used oil.

Mr. STENHOLM. Any further questions?

Thank you very much.

Mr. CADWELL. Thank you, Mr. Chairman.

Mr. STENHOLM. Next we will have panel 3, J. Winston Porter, Assistant Administrator, Solid Waste and Emergency Response, U.S. Environmental Protection Agency, accompanied by Marcia Williams, Director, Office of Solid Waste; Mark Greenwood, assistant general counsel, RCRA branch, John Lehman, Director, Waste

Management and Economics, Office of Solid Waste, and Lisa Friedman, associate general counsel for Solid Waste Response Division.

TESTIMONY OF J. WINSTON PORTER, ASSISTANT ADMINISTRATOR, SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY [EPA], ACCOMPANIED BY MARCIA WILLIAMS, DIRECTOR, OFFICE OF SOLID WASTE, MARK GREENWOOD, ASSISTANT GENERAL COUNSEL, RCRA BRANCH, JOHN LEHMAN, DIRECTOR, WASTE MANAGEMENT AND ECONOMICS, OFFICE OF SOLID WASTE, AND LISA K. FRIEDMAN, ASSOCIATE GENERAL COUNSEL FOR SOLID WASTE AND EMERGENCY RESPONSE DIVISION

Mr. PORTER. Thank you, Mr. Chairman.

It is a pleasure to be here today and talk about used oil. It is one of the more complicated issues with respect to what direction we will take at EPA.

I would like to discuss the issues as we see them.

I have submitted written testimony for the record and I would like to talk somewhat informally and summarize my comments using charts.

Mr. STENHOLM. Without objection, your entire statement will be made a part of the record as will all statements today and we will appreciate summarization.

Mr. PORTER. We have received more comments on this particular proposal than any in the RCRA Program, over 800 comments. We have spent a great deal of time analyzing them.

First, I will discuss the used oil management system and how it fits in the hazardous waste system.

If I could direct your attention to the first chart, this is a depiction of the used oil management system in the country with the generators on the left, that is, industrial and automotive as well as the do-it-yourselfers.

There are over 300,000 industrial generators, a little less than 300,000 automotive generators of various types and 30 to 40 million do-it-yourselfers.

A number of independent collectors pick up used oil and some of it goes directly to processing companies.

The terms "minor" and "major" processing companies refers to the process as opposed to size of company. Minor processing companies do a limited job of treatment and settlement to remove suspended material from used oil.

Major processing involves heat treating and emulsion breaking. The re-refining companies distill and employ sophisticated operations to turn the used oil back into lube oil or other fractions.

A fair amount becomes industrial fuel, primarily boiler fuel, after recycling. Lubricating oil is made by re-refiners and end users and a fair amount is disposed of.

In this chart I am simply trying to make the point, as you have heard from previous testimony, that there are many RCRA and other regulations and laws that apply to used oil.

Again, I won't describe all of these. I will discuss the high points, however.

On the left-hand side, the decision whether to list used oil as hazardous is why we are here today. We announced in November a proposal which would list all used oil as hazardous waste. We then went out again in March. We received so many comments we decided to go with a supplemental listing in which we asked for comments specifically on the concept of listing as a hazardous waste where the used oils would be disposed of as opposed to recycling.

We made a proposal on the management standards for recycled oil, which does a number of fundamental things.

It breaks the community down into large and small. We heard about the 300 gallons a month a few minutes ago, and we have different rules that apply to the large generators and the small.

Perhaps the most important part of the proposal has to do with secondary containment for the larger generators. It describes specifications for fuel such that if they fall within the specifications we can burn it as a fuel and it prohibits road oiling, which is an area we have had a lot of problems with in terms of Superfund and other programs.

You heard some testimony about State programs. There are approximately eight States that list used oil as a hazardous waste.

We received comments from some of these States. I think it is fair to say the majority objected to listing used oil as a hazardous waste, but on the other hand, three or four did not. Three or four thought that the proposal was heading in the right direction.

We have had dialog on Superfund issues. I won't get into that except to say we have responded to some 25 sites which were related to used oil. We think there is a problem there and we need to work through what is the best response to that problem.

Our concern is with the constituents in the oil, the lead, and other materials as opposed to used oil per se. I think that is true of the Superfund Program in general.

The reason I put all three up here, Mr. Chairman, is I want to assure you that we are trying to think carefully through the implications of all of these proposals, rules, and regulations as they impinge on the used oil community. There are others that aren't here, such as the hazardous tank rule.

This is my key chart in that what I want to do with this chart is show you the alternatives as we now see them.

I want to assure you that we are working very hard analyzing the comments to develop the right set of alternatives. It is fairly complicated.

I will discuss the essence of these four alternatives.

The first alternative, we can list all used oil as a hazardous waste. We proposed that alternative last November. Any oil destined for disposal is treated as a full subtitle (c) hazardous waste under RCRA. On the other hand, we have management standards relating to recycled oil.

If you mix the recycled oil with other hazardous waste, it is treated as hazardous waste.

Another alternative is listing some of the oil as hazardous waste, and we could do it either by concentration of hazardous constituents in the oil or by classification.

We might say that industrial oil is or is not a hazardous waste or we might say that automotive oil is or is not a hazardous waste.

Fundamentally, once you split it, you have management standards for the recycled portion.

If used oil is not listed as hazardous waste, it can be broken into two groups: Disposal and recycle. Used oil destined for disposal would be covered by the subtitle (d) or municipal-type solid waste requirements, which is a State program which the Federal Government does not currently interact with very strongly.

In other words, the hazardous waste requirements are much more stringent than the solid waste requirements.

No. 3, we could list for disposal, but not for recycle. That breaks down into the disposal part and management standards. This is not to say that under each alternative the management standards would be the same. They might be somewhat different if listed as a hazardous waste or not.

At the other end of the scale, we could list no used oil. We then use our solid waste requirements which are State implemented with respect to disposal and could write management standards for recycling. Those are the general alternatives as we see them.

Let me close by saying that we are now looking at a number of features, analyzing the 800 comments received very carefully, looking at the impact of oil prices, which is a wild card that came into this in the last few months.

Earlier, crude was selling for $30 a barrel. It is now much below that and is having some impact on the situation. In addition, the insurance situation has changed in the last year with respect to hazardous waste.

We are looking at State programs. We had a lot of dialog with States and a lot of comments—we certainly don't want to kill off or inhibit in any way State programs.

Finally, we are looking at Superfund. That concludes my testimony, Mr. Chairman. I would be happy to answer any questions.

[Mr. Porter's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF J. WINSTON PORTER, ASSISTANT ADMINISTRATOR, SOLID WASTE AND EMERGENCY RESPONSE, EPA

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE. I AM J. WINSTON PORTER, ASSISTANT ADMINISTRATOR FOR THE OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE AT THE U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA). WITH ME TODAY ARE MARCIA WILLIAMS, DIRECTOR OF THE OFFICE OF SOLID WASTE, AND LISA FRIEDMAN, ASSOCIATE GENERAL COUNSEL FOR THE SOLID WASTE AND EMERGENCY RESPONSE DIVISION.

WE APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE THIS SUBCOMMITTEE TO DISCUSS EPA'S ACTIVITIES RELATED TO USED OIL REGULATIONS. IN MY TESTIMONY, I WILL FIRST DISCUSS THE HISTORY OF THE USED OIL AND WASTE-AS-FUEL REGULATIONS AND REVIEW THE STATUTORY REQUIREMENTS ASSOCIATED WITH THE AGENCY'S NOVEMBER 29, 1985 PROPOSAL. I WILL THEN DESCRIBE THE IMPACTS OF THE PROPOSAL ON THE SMALL BUSINESS COMMUNITY PURSUANT TO CURRENT MARKET DISRUPTIONS AND DISCUSS INPUT RECEIVED FROM THE COMMUNITY. FINALLY, I WILL DISCUSS THE OPTIONS THAT ARE UNDER CONSIDERATION, AND PROVIDE AN OVERVIEW OF THE EFFORTS THAT ARE CURRENTLY UNDERWAY TO ASSIST US IN REACHING A REGULATORY DECISION.

I. BACKGROUND

IN THE EARLY 1970'S, CONGRESS RECOGNIZED THAT THE DISPOSAL OF USED OIL COULD POSE A THREAT TO THE ENVIRONMENT THROUGH POTENTIAL GROUNDWATER AND STREAM CONTAMINATION. IN PASSING THE 1972 FEDERAL WATER POLLUTION CONTROL ACT, CONGRESS, in section 104(m), mandated the Administrator of the Environmental Protection Agency (EPA) to conduct a study of used oil. That study was completed in 1974. Continued concern led to the authority to regulate recycled oil in the Used Oil Recycling Act of 1980.

Congress significantly revised these provisions in the 1984 Hazardous and Solid Waste amendments to the Resource Conservation and Recovery Act (RCRA) to emphasize that the Agency's main goal, with respect to used oil, is to protect human health and the environment from hazards associated with recycling of used oil. The 1984 Amendments also required the Agency to determine whether to list used oil as a hazardous waste and specified management standards for recycled oil.

Congressional concern has centered on used oil that is contaminated through use or adulterated after use, i.e., used oil to which hazardous substances have been added. Toxic constituents in used oil can be released to the environment through uncontrolled burning, road oiling, disposal, and improper storage. EPA's studies indicate that significant health risks are associated with improper used oil management.

There have been numerous well-publicized incidents stemming from the improper management of used oil. The legislative history to the 1984 amendments mentions a number of these, such as burning contaminated oil as fuel oil in urban areas, and road oiling with contaminated oils. In addition, 25 used oil recycling sites have been placed on the Superfund National Priorities List, many of which have caused ground water contamination.

II. STATUTORY REQUIREMENTS

RCRA section 3014 requires EPA to establish management standards necessary to protect human health and the environment from the hazards associated with recycling used oil. The development of management standards is to ensure that the recycling of used oil is not discouraged, and is consistent with protection of human health and the environment. EPA is required to issue these standards by November 8, 1986.

EPA is also required to make a determination whether or not to list certain used oil as a hazardous waste. EPA was required to decide whether to propose to list used crankcase oil by November 8, 1985, and make a final determination whether to list all types of used oil by November 8, 1986. The basis for these decisions is whether the used oils meet the listing criteria in RCRA section 3001.

The 1984 amendments emphasize that the goal of encouraging recycling is not to predominate the goal of environmental protection. Therefore, EPA's proposal strives first to protect human health and the environment while minimizing adverse impacts on recycling.

III. OVERVIEW OF USED OIL REGULATORY INITIATIVES

A. Listing Proposal

EPA has acted aggressively to implement the Congressional directives. In an effort to address the worst problems first, the Agency promulgated final rules on November 29, 1985, which prohibit the burning of hazardous waste and off-specification used oil fuel in non-industrial boilers and furnaces. These rules contain administrative standards necessary to enforce this prohibition. The rules also contain a quick screening test for determining when used oil has been adulterated with hazardous waste, and should substantially discourage this illicit practice.

The rules of most concern to this Subcommittee are the November 29, 1985, proposed listing of used oil as a hazardous waste and proposed management standards for recycled oil. In accord with the Congressional directive, EPA proposed to list used oil as a hazardous waste because used oil met the criteria for listing contained in RCRA section 3001. Used auto crankcase oil is heavily contaminated with lead, and can contain other toxic metals such as cadmium and chromium. There is less evidence that industrial used oils are hazardous as generated, but data show that these oils may become heavily contaminated by the time they reach used oil processors. EPA's listing proposal took into account this frequently-occuring, subsequent adulteration. In addition to these technical reasons supporting the listing, the Agency was influenced by the 1984 RCRA amendments which set out a cradle-to-grave regulatory system for recycled oil. As RCRA is written, EPA probably cannot authorize States to administer recycled oil programs or have certain criminal enforcement authorities over recycled oil, unless recycled used oil is a hazardous waste.

B. Management Standards Proposal

In the proposed management standards for recycled oil, the Agency sought to promote the Congressional objectives of protecting human health and the environment, encouraging environmentally acceptable types of used oil recycling, and reducing impacts on small quantity generators and small business recyclers. Thus, the Agency proposed to exempt from all regulation oil that is re-refined from used oil, and all used oil fuel that meets EPA's specification for toxic constituents. EPA also proposed to exempt from virtually all regulation, generators of small quantities of recycled oil. The Agency further proposed, in keeping with the 1984 amendments, to exempt all generators from hazardous waste manifest requirements, provided they entered into contracts with recycling

FACILITIES. LARGE GENERATORS OF RECYCLED OIL WOULD HAVE A REDUCED SET OF STORAGE REQUIREMENTS (COMPARED TO OTHER HAZARDOUS WASTE GENERATORS) AND RECYCLERS WOULD IN MOST CASES BE ELIGIBLE FOR A SPECIAL PERMIT BY RULE. REMAINING PROPOSED MANAGEMENT STANDARDS WERE IDENTICAL OR SIMILAR TO THOSE FOR OTHER HAZARDOUS WASTES.

IV. IMPACTS ON THE COMMUNITY

A. REGULATORY IMPACT ANALYSIS (RIA)

THE AGENCY CAREFULLY EVALUATED THE IMPACT OF THE PROPOSED LISTING AND MANAGEMENT STANDARDS, AS WELL AS OTHER POSSIBLE REGULATORY OPTIONS. THE RIA PRESENTS DETAILED PROJECTIONS OF ASSOCIATED COSTS AND IMPACTS ON GENERATORS, TRANSPORTERS, COLLECTORS, PROCESSORS OF VARIOUS SIZES, RE-REFINERS AND ULTIMATE USERS. THE AGENCY'S CONCLUSION WAS THAT ALTHOUGH THERE WERE SIGNIFICANT COSTS ASSOCIATED WITH THE PROPOSAL, THE ULTIMATE RESULT WOULD BE AN INCREASE IN ENVIRONMENTALLY ACCEPTABLE TYPES OF RECYCLING, CHIEFLY RE-REFINING AND CONTROLLED BURNING. THE AGENCY REACHED THIS CONCLUSION BECAUSE ROAD OILING AND UNCONTROLLED BURNING WOULD BE PROHIBITED, USED OIL DISPOSAL WOULD BECOME MUCH MORE EXPENSIVE, AND RECYCLED OIL COULD STILL BE MARKETED AT A LOWER COST THAN VIRGIN PETROLEUM PRODUCTS. AT THE SAME TIME, THE AGENCY NOTED THAT IT IS DIFFICULT TO QUANTITATIVELY EVALUATE SUBJECTIVE PERCEPTIONS ASSOCIATED WITH REGULATION, AND THEIR POSSIBLE IMPACT ON RECYCLING.

MANY FACTORS HAVE CHANGED SINCE THE DEVELOPMENT OF THE RIA. PRICES OF ALL PETROLEUM PRODUCTS HAVE DROPPED SIGNIFICANTLY OVER THE PAST SEVERAL MONTHS. THE PRICE OF "VIRGIN" FUEL OIL HAS DROPPED DRAMATICALLY, REDUCING THE INCENTIVES TO USE WASTE-DERIVED FUEL. THE PRICE PAID TO GENERATORS OF USED OIL HAS ALSO RECENTLY BEEN DROPPING. IN ADDITION, INCREASING INSURANCE LIABILITY COSTS COUPLED WITH LIMITED AVAILABILITY HAVE CONTRIBUTED TO THE DIFFICULTIES FACED BY THE REGULATED COMMUNITY.

B. COMMUNITY INPUT

TO DETERMINE THE EFFECT OF THE PROPOSED REGULATIONS IN LIGHT OF THE CURRENT MARKET DISRUPTIONS WE HAVE MET WITH SERVICE STATION OPERATORS, CAR DEALERS, AND TRADE ASSOCIATIONS REPRESENTING AUTOMOTIVE SERVICE ESTABLISHMENTS, USED OIL PROCESSORS AND REPRESENTATIVES OF USED OIL BURNING INDUSTRIES. THEY VOICED MUTUAL CONCERN ABOUT LISTING OF USED OIL AS A HAZARDOUS WASTE, IN ADDITION TO CERTAIN ASPECTS OF THE PROPOSED MANAGEMENT STANDARDS. THE GENERATORS MAINTAIN THAT SUCH AN ACTION WILL LEAD SOME SERVICE STATIONS TO RAISE PRICES FOR, OR EVEN DISCONTINUE OIL CHANGE SERVICES. THEY BELIEVE THAT SERVICE STATIONS MAY ALSO REFUSE TO ACCEPT "DO-IT-YOURSELFER" OIL. FINALLY, THEY FEAR AN INCREASE OF UNCONTROLLED DISPOSAL MAY OCCUR.

MANY PROCESSORS INDICATE THAT THEY CANNOT PRESENTLY SELL THEIR REPROCESSED USED OIL FUEL. THEIR FUEL CUSTOMERS, MOSTLY ASPHALT PLANTS, ARE RELUCTANT TO ACCEPT THE USED OIL FUEL DUE TO CONCERNS OF POTENTIAL FUTURE REGULATORY INVOLVEMENT, INCREASED INSURANCE COSTS, AND THE STIGMA ATTACHED TO HAZARDOUS WASTES.

C. COMMENTS RECEIVED

IN ADDITION TO MEETING WITH MANY OF THOSE AFFECTED BY THE PROPOSED RULE, WE HAVE RECEIVED OVER 800 COMMENTS ON THE NOVEMBER 29, 1985 PROPOSALS AND A MARCH 10, 1986 SUPPLEMENTAL NOTICE. A NUMBER OF TRADE ASSOCIATIONS, STATE ENVIRONMENTAL AGENCIES AND ENVIRONMENTAL GROUPS COMMENTED ON THE PROPOSAL. THE GREAT MAJORITY OF THE COMMENTS OPPOSED ASPECTS OF THE PROPOSAL, PARTICULARLY THE PROPOSED LISTING OF RECYCLED OIL AS A HAZARDOUS WASTE. THE AGENCY HAS EVALUATED THESE COMMENTS CAREFULLY, AND IS NOW DECIDING WHAT FINAL DIRECTION TO TAKE AS A RESULT OF THE COMMENTS, CHANGES IN MARKET CONDITIONS, AND ADDITIONAL ANALYSES.

V. OPTIONS AVAILABLE

Comments submitted on the proposed rule raised several alternatives to the proposed listing and proposed management standards. With regard to listing, these included subcategorizing types of used oil by listing those that are hazardous as generated (e.g., crankcase oil) and not listing those that are not (e.g., industrial oils). The Agency also is investigating suggestions to define hazardous used oil by establishing concentration levels for hazardous constituents in used oil. With either of these approaches, the Agency is considering whether the listing should apply only to used oil that is disposed rather than recycled, to the extent allowed by the 1984 HSWA amendments. EPA also will consider the range of management standards available, taking into consideration commenters' concerns, and develop an implementation strategy accordingly. Part of this strategy could be an effort to communicate requirements to affected parties, especially small businesses.

VI. SUMMARY OF ACTIVITIES TO BE COMPLETED IN THE NEAR TERM

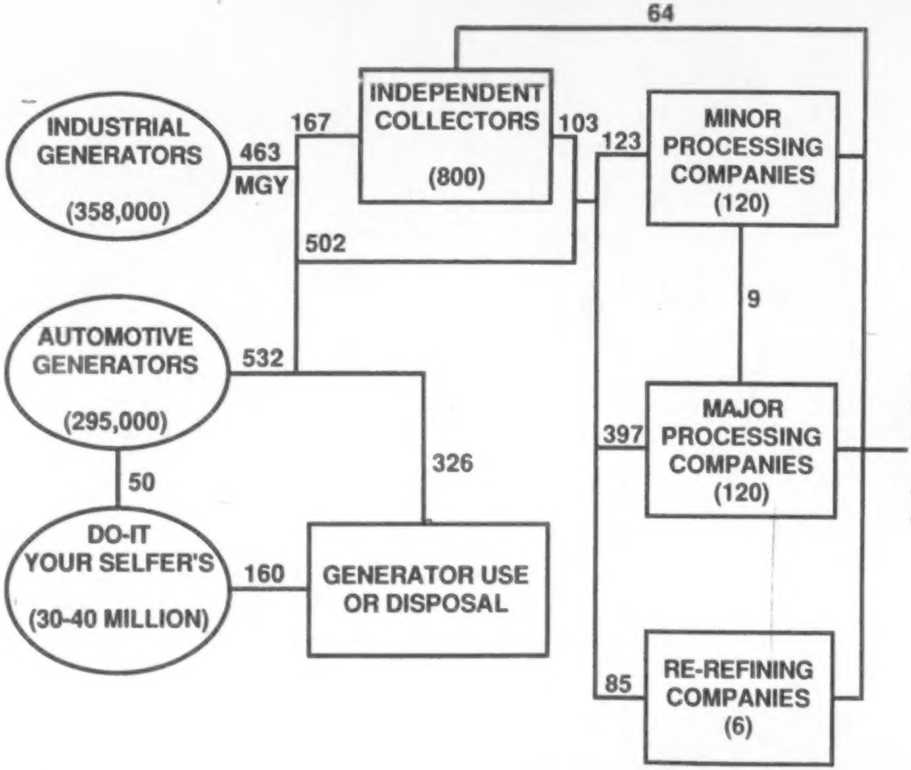
The used oil issue is the sum of many diverse and complex issues. There are many different types of used oil, many alternative modes of disposal into the environment, many alternative modes of used oil recovery, and many alternative incidences of cost burden for disposal and recovery. Several efforts are underway to help us to reach a decision on the options that are under consideration:

- We will continue to analyze comments received on the proposals and will continue to canvas the community to assess the impacts of the rules.

- WE WILL ASSESS IMPACTS IMPOSED BY THE CURRENT DROP IN OIL PRICES, INCREASING INSURANCE COSTS, AND IMPEDIMENTS TO NEW BUSINESS ENTRIES RESULTING FROM VARIOUS REGULATORY SCENARIOS.
- WE ARE UPDATING OUR REGULATORY IMPACT ANALYSIS TO REFLECT CHANGES IN OIL PRICES AND THE INCREASED COST OF LIABILITY INSURANCE.
- WE ARE ASSESSING IMPACTS FROM STATE HAZARDOUS USED OIL REGULATORY PROGRAMS IN EFFORTS TO QUANTIFY THE IMPACT RESULTING FROM THE PROMULGATION OF STATE REGULATIONS THAT LIST USED OIL AS A HAZARDOUS WASTE, AND TO IDENTIFY FACTORS THAT MAY ALLEVIATE ADVERSE IMPACTS.
- FINALLY, WE WILL DEFINE AND EVALUATE THE IMPLICATIONS OF THE LISTING APPROACHES WITH RESPECT TO THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA).

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY. I WOULD BE HAPPY TO RESPOND TO ANY QUESTIONS YOU MIGHT HAVE.

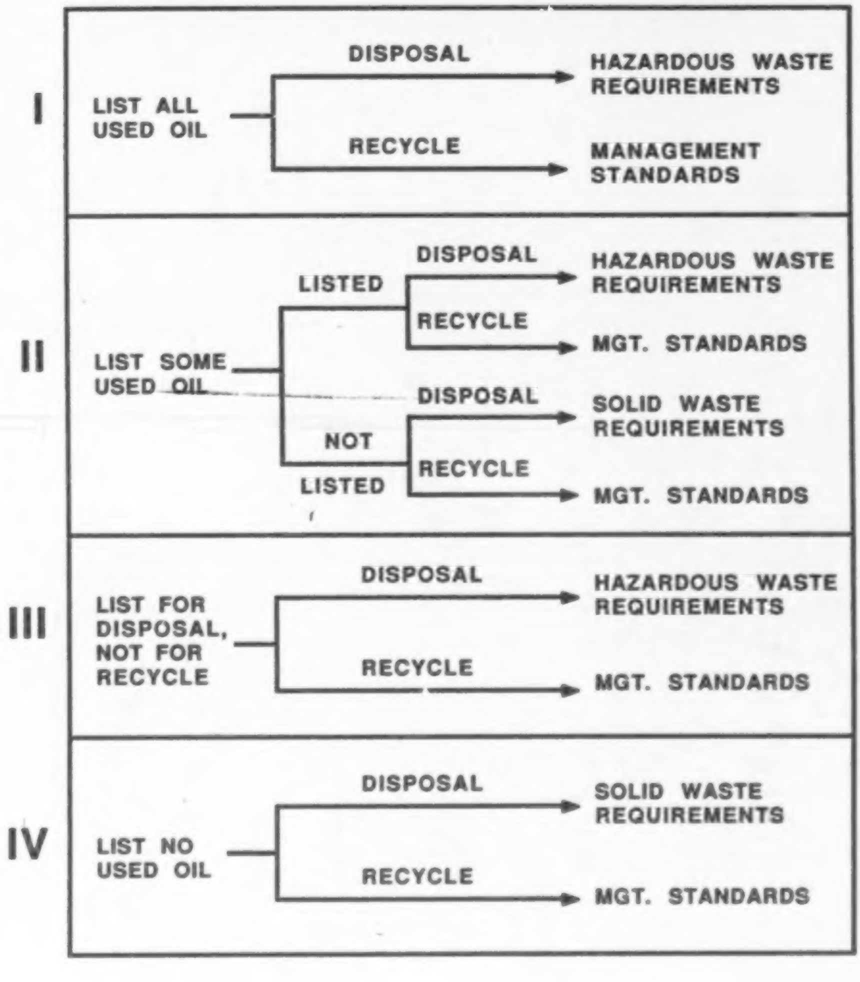
USED OIL MANAGEMENT SYSTEM


64
INDUSTRIAL GENERATORS (358,000)
463 MGY
167
INDEPENDENT COLLECTORS (800)
103
123
MINOR PROCESSING COMPANIES (120)
502
9
AUTOMOTIVE GENERATORS (295,000)
532
397
MAJOR PROCESSING COMPANIES (120)
326
50
DO-IT YOUR SELFER'S (30-40 MILLION)
160
GENERATOR USE OR DISPOSAL
85
RE-REFINING COMPANIES (6)

END USERS

• INDUSTRIAL FUEL	586
• LUBRICATING OIL	59
• NON-FUEL INDUSTRIAL	36
• ROAD OILING	69
• DISPOSAL	405
TOTAL	1155

USED OIL OPTIONS


I
LIST ALL USED OIL
DISPOSAL
HAZARDOUS WASTE REQUIREMENTS
RECYCLE
MANAGEMENT STANDARDS
II
LIST SOME USED OIL
LISTED
DISPOSAL
HAZARDOUS WASTE REQUIREMENTS
RECYCLE
MGT. STANDARDS
NOT LISTED
DISPOSAL
SOLID WASTE REQUIREMENTS
RECYCLE
MGT. STANDARDS
III
LIST FOR DISPOSAL, NOT FOR RECYCLE
DISPOSAL
HAZARDOUS WASTE REQUIREMENTS
RECYCLE
MGT. STANDARDS
IV
LIST NO USED OIL
DISPOSAL
SOLID WASTE REQUIREMENTS
RECYCLE
MGT. STANDARDS

USED
OIL

BURNING AND
BLENDING
REGULATIONS

SUPERFUND
ISSUES

UNDERGROUND
STORAGE
TANKS

MANAGEMENT
STANDARDS FOR
ALL RECYCLED OIL

STATE
PROGRAMS

SMALL QUANTITY
GENERATOR
REGULATIONS

DECISION WHETHER
TO LIST USED OIL
AS HAZARDOUS

Department of Environmental Quality

VICTOR ATIYEH
Governor

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

May 16, 1986

The Honorable Charles Steinholm, Chair
and Members of the Subcommittee on Energy and the Environment
Committee on Small Business
B363 Rayburn Building
Washington, D. C. 20515

Dear Chairman Steinholm and Members of the Subcommittee:

On November 29, 1985, the United States Environmental Protection Agency (EPA) published in the Federal Register proposals to list used oil as a hazardous waste and to set management standards for oil that is recycled. The Oregon Department of Environmental Quality (DEQ) believes that the proposed management standards for generators of used oil, combined with the proposal to regulate oil from households as hazardous waste when that oil is collected for recycling, would have a very negative impact on programs to recycle household generated oil from do-it-yourself oil changers. At the same time, DEQ believes that EPA has presented convincing arguments that used oil contains toxic components of great concern, including components such as benzene and naphthalene that are also present in substantial quantities in new (unused) oil. DEQ also believes that EPA has presented convincing arguments, based on past bad practices, that regulation is needed on the processing, blending, and transporting of used oil, and that oil should be tested for hazardous wastes and other contaminants before being sold to burners or other end-users of the oil.

Unlike other hazardous wastes, nearly half of all used oil is generated by households, from do-it-yourself oil changers. Also, unlike hazardous waste, used oil has been recycled because most firms that pick up used oil from small business generators have in the past paid rather than charged for the oil they collect. DEQ believes that most firms will resume paying the generators for their used oil when the cost of crude oil climbs to near its price of a year ago, provided that the management standards that EPA imposes on the used oil management system do not substantially increase the cost of handling and using used oil.

Some household-generated used oil and nearly all business-generated used oil is presently recycled. Oregon now has more than 400 identified recycling depots that accept oil from the public. In addition, Oregon is now implementing its new "Opportunity to Recycling Act" that requires, at minimum, monthly home collection of identified "recyclable materials" in cities of 4,000 or more population, as well as recycling depots at disposal sites. The criterion in the Opportunity to Recycle Act for identifying recyclable material is economic. A "recyclable material" is defined in the Act as any material that can be collected and recycled for less than or equal to the cost of collection and disposal. Oil has been identified as a "recyclable material" in all 36 Oregon counties. However, if service stations and other oil collection centers have to manage their oil as a hazardous waste, oil will not meet the criterion for recyclable material. If this happens, it is likely that most home collection programs and disposal site recycling depots will drop their oil-recycling activities. The Oregon Sanitary Services Institute, an organization representing many of the businesses that collect recyclable material from households at the curbside, has adopted the position that if its members have to register with EPA as generators of used oil hazardous waste, they will discontinue collecting oil as a recyclable material.

Presently, 40 Oregon cities have door-to-door recycling programs in place that will collect used oil along with other recyclable materials from homes and small businesses. This should increase to 70 cities by the July 1, 1986 implementation date of the Oregon Opportunity to Recycle Act, provided that the price of used oil does not decline substantially by then.

DEQ would like EPA to regulate the recycling of used oil under the authority of the Used Oil Recycling Act (now Section 3014 of RCRA) rather than under the hazardous waste provisions of RCRA (Sections 3001 to 3006). Not having the liability and stigma associated with hazardous waste will be very important in convincing businesses to continue or begin collecting used oil from the public. Oil being disposed of or used in a manner constituting disposal should, however, be regulated as though it were a hazardous waste.

DEQ also believes that some of the management standards proposed by EPA are too strict, and would have a negative impact on household oil collection programs. In particular, DEQ does not believe that oil collected directly from the public by a business should be included in the determination of whether the business is a small quantity or a large quantity generator of used oil. A copy of other specific comments to EPA on their proposed rules is attached.

Separate from the proposed regulation, DEQ believes that EPA can take other actions to protect human health and the environment by promoting the recycling of used oil. The most important of these actions is to assist state and local governments and private businesses on procurement of products made from recycled oil. Federal, state, and local governments could be a major market for used oil. They are major users of heavy oil fuel, and burn far more virgin oil fuel each year than the total amount of used oil generated in the entire country. Many of the boilers used by these governments and agencies could safely burn specification used oil fuel. In addition, government agencies could also procure re-refined lubricating oil in preference to virgin oil. If government agencies used recycled oil products whenever safely possible, this expansion in market for used oil could outweigh any reduction in oil markets caused by the proposed regulation.

Sincerely,

Fred Hansen

Fred Hansen
Director

FH:m
SM296
Enclosure

VICTOR ATIYEH
Governor

Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5396

February 11, 1986

Docket Clerk
Office of Solid Waste WH-562
U.S. Environmental Protection Agency
401 M Street SW
Washington, DC 20460

Enclosed are comments by the Department of Environmental Quality (DEQ) on the EPA proposed used oil rules, including "Recycled Used Oil Standards" (Docket No. 3014) and "Identification and Listing of Hazardous Waste; Used Oil" (Docket No. 3001). Both these proposed rules were published by EPA on November 29th, 1985.

In summary, DEQ believes that EPA can protect human health and the environment by insuring that any regulations adopted encourage, or at least do not discourage, the recycling of household-generated used oil. Although cost is not, and should not be, a direct criterion by which regulation should be judged, cost is none-the-less an important indirect criterion as high cost can be a strong disincentive to oil depots and recyclers collecting used oil from the public. In the enclosed comments, DEQ suggests specific changes to reduce economic and other regulatory disincentives to recycling that might be created by the proposed rules.

Separate from the proposed regulation, DEQ believes that EPA can take two other actions to protect human health and the environment by promoting the recycling of used oil. One possible action is assistance to states for discretionary programs for recycled oil, authorized in Section 4008 subsection (f) of RCRA. Even more effective, however, would be action regarding federal procurement of products made from recycled oil, authorized under Subtitle F Section 6002 of RCRA. EPA can also use its expertise to assist state and local governments on procurement of products made from recycled oil. Federal, State, and local government agencies are major users of oil fuel, and likely burn far more virgin oil each year than the total amount of used oil generated in the entire country. Many of the boilers used by these agencies could safely burn specification oil fuel. In addition, some of the boilers are also of sufficient size, design, and efficiency that they could safely burn off-specification used oil or oil that has inadvertently been mixed with small quantities of spent halogenated solvents. In addition, government agencies could also procure re-refined lubricating oil in preference to virgin oil. If government agencies used recycled oil products whenever safely possible, this expansion in market for used oil products could outweigh any reduction in oil markets caused by the proposed regulation.

Sincerely,

Fred Hansen
Director

FHS
Enclosures
cc: Mike Gearheard, EPA 000

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

COMMENTS ON PROPOSED LISTING OF USED OIL AS HAZARDOUS WASTE
EPA Proposed Rule
Federal Register Vol. 50 No. 230 pp. 49258-49270

The Environmental Protection Agency has provided solid evidence that used oil commonly and regularly contains toxic constituents that could pose hazards to human health and the environment if not properly managed. The Department of Environmental Quality (DEQ) agrees that some regulation is needed concerning the disposal or reuse of used oil.

On the other hand, DEQ believes that listing used oil as a hazardous waste would have a negative impact on the recycling of household-generated oil. This is because if used oil were listed as a hazardous waste, generators including oil recycling depots and programs would have "cradle to grave" liability for the oil under CERCLA, the Comprehensive Environmental Response, Compensation, and Liability Act. This liability, and probable increases in insurance premiums, could dissuade recyclers from collecting and recycling oil.

The DEQ would like EPA to explore the possibility of regulating used oil under some authority other than the authority granted under Sections 3001 to 3006 to list hazardous wastes and set standards for the management of these wastes. EPA certainly has the authority to regulate recycled oil under Section 3014 regardless of whether oil is listed as a hazardous waste. If EPA could also find or develop the authority to regulate the disposal of oil, then the entire system of oil management could be regulated without the liability associated with hazardous waste.

DEQ agrees that EPA should exempt "oily wipers" such as oil-soaked rags from regulation, since the amount of oil lost or disposed of in this manner is of minimal importance. DEQ is uncertain as to how the proposed listing would affect automotive oil filters. Since used filters contain used oil residue, they would presumably have to be treated as any other hazardous waste and thus manifested off site to a treatment, storage, and disposal facility authorized to accept them. The amount of oil disposed of in filters is only a small fraction of the total amount of used oil generated. However, the oil in filters may have particularly high concentrations of toxic contaminents due to the filtering action. DEQ believes that EPA should evaluate the risk involved with disposal of used oil filters. If EPA decides to list used oil filters as a hazardous waste, it should be done as a proposed rule with the opportunity for further comment.

DEQ is also concerned with the financial impact that these proposed regulations will have on state hazardous waste programs in an era of declining federal and state funding. DEQ agrees that the management of used oil needs to be regulated, but feels that to implement stringent regulation may compete with more significant and risky hazardous waste issues.

Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760 PORTLAND, OREGON 97207 PHONE (503) 229-5696

COMMENTS ON "RECYCLED USED OIL STANDARDS"
EPA Proposed Rule
Federal Register Vol. 50 No. 230 pp. 49212-49258

BACKGROUND

Used oil differs substantially from other hazardous waste for a number of reasons:

1) Unlike other hazardous waste, nearly half of all used oil is generated by households, and would be exempt from the proposed rule listing used oil as hazardous waste unless accumulated for recycling.

2) Unlike other hazardous waste, substantial amounts of used oil are generated by generators in the 100 to 1000 kilograms per month range.

3) Unlike most other hazardous wastes, there are collection businesses that buy unprocessed used oil, although the average price paid in Oregon has dropped 60% or more in the past year.

Some household-generated used oil and nearly all business-generated used oil is presently recycled. Oregon now has more than 400 identified recycling depots that accept oil from the public. In addition, Oregon is now implementing its new "Opportunity to Recycling Act" that requires, at minimum, monthly home collection of identified "recyclable materials" in cities of 4,000 or more population, plus recycling depots at disposal sites. The criterion in the Opportunity to Recycle Act for identifying recyclable material is economic. A "recyclable material" is defined in the Act as any material that can be collected and recycled for less than or equal to the cost of collection and disposal. Oil is presently identified as a "recyclable material" in all 36 Oregon counties. However, if service stations and other oil collection centers have to start paying to have their oil managed as a hazardous waste, oil will no longer meet the criterion for recyclable material. If this happens, it is likely that most home collection programs and and disposal site recycling depots will drop their oil-recycling activities. Presently, 35 Oregon cities have door-to-door recycling programs in place that will collect used oil along with other recyclable materials from homes and small businesses. This should increase to 70 cities by the July 1, 1986 implementation date of the Oregon Opportunity to Recycle Act, provided that the price of used oil does not decline substantially by then.

Section 3014 subsection (a) of the Resource Conservation and Recovery Act as amended states:

> The administrator shall ensure that such (oil recycling) regulations do not discourage the recovery or recycling of used oil, consistent with the protection of human health and the environment.

The cost of complying with regulations is not a direct criterion. However, because of the large amount of recyclable oil generated by households, any requirement that substantially adds to the cost of recycled oil management will indirectly increase the risk to human health and the environment by discouraging recycling and increasing the quantity of household and other used oil that is indiscriminately dumped or disposed of. Within the past 12 months, the price paid for used oil by collectors to their best customers in western Oregon, has dropped from 25-30 cents to approximately 10 cents per gallon. This drop has been attributed in part to the declining oil prices world-wide, but also to dislocations in the used oil market place in anticipation of possible regulation, as used oil dealers scramble (for the most part unsuccessfully) to find new customers for their "off-specification" used oil.

With this background information in mind, the DEQ offers the following specific comments concerning the proposed standards for recycled used oil.

1) Standards for Used Oil Processors.

The DEQ believes that the most stringent regulation should be on oil processors, rather than on the generators and transporters of oil. Evidence cited by EPA shows that the most significant incidents involving used oil that have risked human health and the environment have occurred due to unsafe practices by blenders and processors of used oil. This has been the case in the Northwest, with incidents over the past decade including a spill of PCB-containing oil from a processor who used oil for dust control, old oil-reprocessing sites that have become potential Superfund sites, and other spill and contamination incidents.

DEQ believes that in the proposed 40 CFR Part 266.43, EPA has promulgated generally appropriate regulations to govern the management of used oil by processors and blenders. The requirements for analysis will insure that used oil processors are knowledgeable of the contaminant levels in their oil. The requirements for contingency plans and emergency procedures are logical requirements that responsible processors should be following even without the impetus of regulation. The financial and closure requirements, although very expensive to the processor, will protect the public from the risks of site abandonment. However, the risks to the environment and to public safety are probably substantially less for facilities that only process used oil than they are for facilities processing other hazardous wastes, and so the same level of insurance requirements that are placed on other treatment and storage facilities should not be necessary for used oil facilities.

2) Standards for burners of off-specification oil fuel.

The DEQ believes that the proposed management standards for burners of off-specification oil fuel would strongly discourage this use of oil. We do not see a need to regulate the burners of off-specification oil fuel at the same level as oil processors are regulated, unless the burners are also acting as oil processors themselves. The DEQ believes that the regulations in proposed 40 CFR Part 266.44, which additionally subject burners of off-specification fuel to the the requirements of Part 266.43, would make the burning of used oil uneconomical for businesses. The cost of complying with all of the financial and insurance requirements, closure plan, preparedness and contingency plans would far outweigh the price differential between off-specification oil fuel and virgin fuel. This would result in the substitution of virgin fuels in places where recycled oil is presently being safely burned. Since the 1984 DEQ survey showed that more than 90% of oil that is recycled in Oregon is burned as fuel, this portion of the rule, if adopted, would lead to further dislocation of the used oil market and decline in the selling price of oil fuel. Marketers, processors, and collectors of used oil are not in a financial position to absorb this price decrease, and so the decreased price of oil fuel would be passed back as a decrease in the price (or increase in the cost) of recycled oil at the level of oil depots and generators.

Burners who buy their fuel from used oil processors will receive an analyzed product (if the analysis requirements of proposed 40 CFR Part 266.43 are adopted), and thus will know the contaminants in the oil. In contrast, processors usually receive untested oil from multiple sources, each with different levels of contaminants. Burners of used oil generally receive oil, store it temporarily in tanks, and then use the oil as needed. There is usually a minimum of on-site transporting and mixing of oil or accumulation of oil fuel, and so the risk to the environment and to public health and safety at the burner's site is less than the risk at the processors site. At present, off-specification oil is still a valuable product, commanding a price within 40 percent of the price of virgin oil fuel. Thus, burners of used oil would be expected to manage and store the oil with about as much care as they would virgin fuel products. Site-abandonment should also not be a significant problem, since the oil fuel has a value and can be sold. This again is different from the case for other hazardous wastes that can only be removed from abandoned sites at substantial cost.

There has not been a history of incidents of environmental damage involving the handling and storage of used oil by industrial burners in Oregon. In many ways, the risks involved in the storage and handling of off-specification oil fuel are not appreciably greater than the risks in storing and handling virgin fuel. For example, spills of either material into water may cause substantial environmental damage. As EPA studies show, virgin residual fuels are as likely as used oil to contain materials such as polynuclear aromatic hydrocarbons, toluene, benzene, and naphthalene. Off-specification oil fuel should not generally contain exotic toxic components such as chlorinated solvents, dioxins, or high levels of PCBs, since if these substances were mixed with oil, the oil would be fully regulated as either a hazardous waste or a PCB-containing substance. Off-specification fuel would generally have higher levels of heavy metals than virgin oil fuel, but these are mainly of concern when the oil is burned, and not of as great concern regarding management and handling. The requirements for handling of virgin residual fuels should be similar to the requirements for handling of off-specification fuels, since both contain carcinogenic compounds such as polynuclear aromatic hydrocarbons in similar levels. To pose much more stringent requirements on the handling of off-specification fuel than on the handling of virgin fuel would just cause businesses to substitute virgin fuel for used oil, resulting in the dislocation of the oil-recycling market and discouraging recycling as discussed above.

The burning of off-specification oil may pose other potential risks from air contamination. We understand that EPA will address this issue further in the coming Phase II proposed burning regulation. DEQ believes that the risk to human health and the environment caused by burning off-specification used oil in inadequately equipped boilers far exceeds the risk posed by the management of used oil by burners prior to burning, and so EPA should used the Phase II regulations to make sure that off-specification oil is burned only in properly equipped and maintained boilers. However, EPA should not use management standards to discourage all burning of off-specification used oil.

DEQ suggests the following changes:

1) List specific requirements in the proposed 40 CFR Part 266.44, rather than assigning all of the requirements of the proposed 40 CFR Part 266.43.

2) Exempt burning facilities that only burn used oil fuel and do not use or store other hazardous wastes from the proposed 40 CFR 266.43 (g): closure, post-closure, and financial requirements.

3) Use the standards for large generator storage presently contained in the proposed 40 CFR Part 266.41 (c) (which includes standards for facility management such as requirements for personnel training, emergency procedures, and arrangements with local authorities) in place of the proposed 40 CFR Part 266.43 (c), (d), and (h) for burners of off-specification used oil.

4) State explicitly in the rules that the burners of used oil do not have to reanalyze the oil fuel if they are provided the results of analysis sufficient to satisfy the proposed 40 CFR Part 266.43 (b) (1) by the blender or processors.

Standards for Small Generators.

The DEQ agrees that the requirements for small generators of used oil should be kept to a minimum. We find the regulations in the proposed 40 CFR Part 266.40 (c) to be appropriate, although as discussed below, we disagree with the specific level proposed limiting the accumulation of used oil that can be regulated as "small generator recycled oil".

Standards for Generators.

In Oregon, we generally have not had significant incidents of environmental damage stemming from mismanagement of used oil by the generators. Undoubtedly in the past a number of generators have mixed chlorinated solvents and other toxic materials with their used oil. However, with the increased regulation of hazardous waste, this mixing problem has diminished. It should strongly diminish further if the proposed regulations for transporters and processors are implemented, since both would have strong incentives to refuse to collect oil that a generator has mixed with hazardous waste, and so the generator will also have a strong incentive to not mix hazardous waste with the used oil.

Some aspects for the standards for generators will, however, strongly discourage service stations and other generators from accepting household generated used oil, thus increasing the risk to human health and the environment by increasing the amount of household used oil dumped indiscriminately or otherwise disposed of instead of recycled. This comes about by the combination of:

1) regulating household oil when accumulated for recycling,

2) having the oil collected from households included when the determination is made as to whether a business is a small generator or a fully regulated generator of recycled used oil, and

3) strict standards, including daily monitoring of tank equipment and above ground portions of tank systems.

Changes in any one of these three factors could remove the disincentive for businesses to collect and recycle household oil.

The following changes are recommended:

1) Exempt household generated used oil from the quantity determination under the proposed 40 CFR Part 266.40 (c).

Including household oil in the quantity determination could cause some small generators who serve as used oil collection depots to exceed the limits and to become fully regulated as large generators. This would be a major disincentive for small generators to receive and recycle household-generated oil if the generator is already near the limit.

2) Set the limit for recycled oil in gallons rather than kilograms.

Oil is generally measured in gallons, and it would be very difficult under most circumstances to accurately measure the weight of the oil. In addition, measuring recycled oil in gallons instead of kilograms would help reduce the confusion by emphasizing that recycled oil does not count towards the limit in 40 CFR Part 261.5 between small generators and fully regulated generators of other hazardous waste. Either a 300 or a 600 gallon per month limit (1,000 or 2,000 kilograms/month as discussed by EPA in the preamble) seems appropriate.

3) Set the limit regarding accumulated recycled oil at 600 gallons.

According to 50 FR 49224-49225, EPA based its estimate of how many establishments would be fully regulated as generators of recycled oil just on the rate that they generate the oil. The DEQ believes that if present oil collection practices were to continue, this strongly underestimates the number of regulated generators, as many establishments generate less than 1,000 Kg/month (300 gallons/month) but accumulate more than that before the oil is collected for recycling. Data presented by two local collectors indicates that nearly a thoird of the tanks in service for used oil hold approximately 500-600 gallons, but that most users of these tanks generate much less than 300 gallons of used oil per month. Thus, unless the users of these tanks have their oil picked up and recycled when the tank is only half-full, they would be regulated as full generators. If the generators have their oil collected more frequently in order to avoid full regulation, this will substantially increase the cost of oil collection and decrease the price (or increase the cost) that collectors pay (or charge) to collect and recycle the oil. This increase in cost would be a further disincentive to generators or small generators collecting household oil for recycling.

Standards for Transporters

Because of the Oregon Opportunity to Recycle Act, Oregon has "on-route" recycling programs that collect oil (and other recyclables) from both small businesses and households. For the most part, the operators of these recycling collection programs are garbage haulers who pick up small quantities of used oil from households and small businesses along with other source-separated recyclable materials. These programs differ from the usual oil collector operations, in that they do not pay or charge for the oil, and only collect oil in small quantities. They instead are more closely analogous to oil-recycling depots or oil generators, except that transportation is provided by the recycler rather than by the household or small business.

The proposed rule as published in the November 29th, 1985 Federal Register improved significantly on earlier drafts of the proposed rule in that household-generated oil being transported from households to collection centers is specifically exempted from the transportation standards. However, under these proposed rules as published, our on-route recycling collection programs could not feasibly pick up small quantities of oil from small businesses. If they did pick up any used oil from businesses, they would then have to meet the transporter standards, including the requirement to not store the oil longer than 10 days (or else also meet all of the oil processing facility standards). The DEQ does not believe that the rules adopted by EPA should discourage these recycling programs from offering free collection and transportation of small quantities of used oil.

One solution would be to modify the proposed 40 CFR Part 266.42 to allow oil recyclers who pick up small quantities of oil (less than 50 gallons from any single business establishment at any time) and take that oil back to their collection center to manage the oil as though they were the generator rather than the transporter of the oil. This would also reduce the record-keeping requirements concerning very small quantities of oil.

The DEQ does not see any particular reason why oil collectors should be required to transport their oil to a oil processing facility within 10 days or else have to meet all of the standards of a processing facility. A 30 day limit, in line with the limit on generators, seems more reasonable, provided that the transporters who store oil longer than 10 days at least provide the same management standards for storage as is required for generators.

Analysis and mixing rule problems.

One other concern/question that DEQ would like EPA to address is a practical problem oil processors presently face concerning the detection and management of oil that may contain very small concentrations of hazardous waste such as spent halogenated solvents. DEQ is not aware of any practical and accurate test for halogens that a collector or processor can feasibly administer in the field before accepting a quantity of used oil. Massive adulteration of oil with halogenated solvents can be detected by smell or by low flashpoint or viscosity, but concentrations of solvents on the order of 1,000 parts per million are difficult for collectors to detect at the generator's site without requiring laboratory testing of each generator's oil. Thus, in spite of the reasonable precautions and attempts to keep generators from mixing hazardous waste with used oil that a collector or processor may make, it is possible to unknowingly accept oil mixed with minute amounts of hazardous waste. If a collector or processor sends a sample to be analyzed at a lab, and the results come back (after a week or two) showing that the halogen level is close to the 1,000 PPM level, the collector or processor would reasonably be expected to make further investigation as to the source of the halogen. This investigation might reveal that somewhere, some small generator mixed a small quantity of spent halogen solvent with his or her oil. By the mixing rule then, all of the oil mixed with this oil is now hazardous waste, including all of the oil in the processor's full accumulation tank. This is true even though the oil in the accumulation tank may meet all standards for specification fuel. The large processors in Oregon all use heat to drive off water and "light ends" (which would include halogenated solvents). However, if the collector or processor is not authorized to handle hazardous waste, then this handling and treatment would not be authorized and the oil must all be shipped off site at great expense. Even if the collector or processor was authorized to handle other hazardous waste, the oil that has been heat-treated and thus contains virtually no halogenated solvents would still be classified as hazardous waste and would be ineligible to be sold as specification fuel unless the collector or processor can have the oil delisted (a lengthy procedure).

The changes in the mixing rule that EPA proposes in the "listing" rule will further aggravate the problems described above faced by collectors and processors, since oil mixed with small amounts of "characteristic" waste or small generator waste would still need to be treated as hazardous waste and would be ineligible for the special management standards EPA is proposing for used oil. This is true even if the waste would not normally be considered hazardous except for showing the characteristic of ignitability, and even if the resultant mixture does not show any of the characteristics of hazardous waste. DEQ does agree with EPA that the regulations promulgated should strongly discourage the mixing of hazardous waste with oil. However, DEQ would like EPA to address the problems described above in the final rulemaking.

Mr. STENHOLM. Thank you very much.

Mrs. Long.

Mrs. LONG. Thank you, Mr. Chairman.

You say you have 800 comments. Is there any evidence weighing heavier on one of these proposals than the other?

Mr. PORTER. Marcia Williams may want to comment on this, too—I think it is fair to say that, in sheer numbers, most people do not want it listed as a hazardous waste. There was a lot of sympathy for the recycling situation to handle recycling differently. I think that is the overwhelming thrust that resulted from this.

Mr. STENHOLM. Mr. Combest.

Mr. COMBEST. Thank you, Mr. Chairman.

There are some of us that would like to see $30 oil again. You mentioned—I need to make certain I understood what you said.

Did you say that there were, in your testimony, three or four States that list used oil as a hazardous waste material or that are recommending that you list it as a hazardous waste?

Mr. PORTER. There are eight States that list hazardous waste as a used oil in some way. They don't all do it the same way. I believe our comments broke down into three States—they weren't necessarily the same in terms of the eight—three States encouraged us to list used oil as a hazardous waste, five did not.

Mr. COMBEST. They did not encourage it?

Mr. PORTER. Yes.

Mr. COMBEST. Did they discourage it?

Mr. PORTER. Yes; in various degrees, some are much stronger than others.

Mr. COMBEST. Could you tell me who are the three that encouraged it?

Mr. PORTER. The States that wanted us to list used oil as a hazardous waste were Georgia, New York, and Connecticut.

Mr. COMBEST. Do you have a basic timeframe that—and obviously I don't want to pin you to it, but a timeframe that a decision may be made?

Mr. PORTER. Yes; let me work backward, Congressman. We, by statute, are supposed to have this regulation out in November, this fall. There are a lot of procedures and reviews between now and then. I would think this summer, in the next month or two, we will be making some fairly basic decisions or trying to make those and then aiming toward that November deadline.

Mr. COMBEST. For a final rule?

Mr. PORTER. Yes.

Mr. COMBEST. You list as options under your used oil options here, recycle, obviously we know what that is. How do you dispose of that which is not recycled?

Mr. PORTER. You mean today?

Mr. COMBEST. Yes.

Mr. PORTER. We think there are a number of things that happen today. If you look at the 30- or 40-mile do-it-yourselfers, I would think a fair amount of that goes directly to disposal on your driveway or backyard or down the sewer. Only 20 percent of the do-it-yourselfers take the material to a recycling station, so there is a fair amount disposed of in subtitle (d) facilities or by other methods.

Mr. COMBEST. Do you think if it were listed as hazardous waste that it would encourage do-it-yourselfers to bring it to a service station if they could find no collection point?

Mr. PORTER. I think the effect will not be on the do-it-yourselfers. I think the effect will be on the gas stations who may not want to take it. There is no liability on the homeowner. There is a householders' exclusion under RCRA.

Mr. COMBEST. My point is, do you think it might have an effect on how much could be collected for further disposition, whatever that may be, if in fact it was listed as a hazardous waste, even if you had the option in changing the oil and taking it to a service station two blocks away and leaving it, or they wouldn't take it. That is going to encourage you to do something else with it.

If this was in fact listed as No. 1, if a service station would accept it, regardless of what they do with the do-it-yourselfers, there are a lot that that is a primary part of their business, changing oil in people's cars.

How are they going to even handle their own? I guess this is a major concern we have and again I apologize if I relate it to my own personal experience, but having grown up around that type of business, I know what we used to do with it years ago when it was collected.

And certainly there needs to be some regulation of that. I have no problem with that at all, but if a service station owner is trying to deal with it on a hazardous waste standpoint, I think he is going to really discourage what it is we are trying to get to.

On the other chart where you show your used oil management system and in the flow here, you come down and have minor processing companies, major processing companies, re-refining companies and the end use of that as it comes out. Are you satisfied or is EPA satisfied that when those processes are gone through and a product is prepared for end use, that it is satisfactory? Does it meet your requirements and your regulations and your criteria?

Mr. PORTER. In general, as we tried to write management standards or propose management standards for the recycling industry, I think we feel there is some tightening up that needs to be done. They have the residuals to be gotten rid of so we have tried to tighten up that operation, too, because we don't think it is necessarily without problems.

Mr. COMBEST. That would be the operation in this cycle here?

Mr. PORTER. That is correct.

Mr. COMBEST. That is where you are talking about needing to do tightening up?

Mr. PORTER. Those are our so-called management standards. It relates all the way through the system, but we are saying that, as you look at that whole system of recycling system from generator through disposal through making a product, there does need to be some tightening up in our judgment.

Mr. COMBEST. It seems to me the direction we may want to try to go to reach the individual goal, to keep the used oil from being poured on the driveway or along a fence to kill weeds, we may want to encourage people to bring it into a service station, a quick change, whatever it may be, in order to dispose of it so that it can go through the system and be easily handled without a lot of potential problems through insurance, through liability problems to encourage bringing it in, rather than what I fear would be the result of listing this as hazardous waste by discouraging it, by making it almost impossible.

A hazardous waste determination within a State, within their own regulation, would not carry the same problems incurred with a hazardous waste listing by the Federal Government, would it?

Mr. PORTER. I am not sure what you mean by problems.

Mr. COMBEST. Well, the problems we could probably talk about for a long time with hazardous waste. I mean it would not carry the same implications under a State standard declaring something a hazardous waste as it would by EPA, Federal Government Superfund hazardous waste?

Mr. PORTER. If you are talking, for example, from an insurance standpoint, I am not sure it would be that different depending on how onerous the definition was. Some States regulate used oil substantially. New York, for example, requires service station owners to take hazardous waste. You can't say you won't take it. They have a fairly prescriptive set of regulations.

Mr. COMBEST. If a State comes up with a declaration, let's use, for example, if in Mrs. Long's State of Louisiana they decided to do that and we decided in Texas not to do it, we could take her used oil there?

Mr. PORTER. That is one of our concerns. We would like to have this problem solved as locally as possible. At the same time, we are concerned, that we do not create a situation where people take it across State lines, find a State which is regulated and then one that isn't regulated and the used oil gets hauled to the next State.

Mr. COMBEST. It may be in the interest that we want to provide that opportunity in order to truly dispose of it without creating a burden or a hazard.

Thank you.

Mr. STENHOLM. Mr. Combest's reference to personal experience brought one that popped into my mind when I was in high school and in the FFA. One of the projects I had for agriculture was laying hens. I found one of the most effective controls of blue bugs, which is a blood-sucking tick, was crude oil, used oil that you would apply to the roost that the chickens sat on at night.

It was very effective, it was cheap, so I guess I was one of the first collectors and recyclers of fuel oil and I didn't realize I was doing it at that time.

Mr. COMBEST. Would the gentleman yield?

It also does great to keep flies off of cattle.

Mr. STENHOLM. It surely does. I guess it would be illegal to do it today, but it was darn cheap when we were doing it at the time. Based on the information you have gathered since November 29, 1985, is it EPA's view today that the data on the oil recycling system in the United States contained in the regulatory impact analysis was adequate?

Mr. PORTER. I will ask Marcia Williams to comment.

Ms. WILLIAMS. We feel that it was adequate data at the time it was done. It was done last summer and a number of things have changed pretty substantially since then. What we are doing now is based on the new information coming into us, plus our collection efforts for data. We are going to be updating that analysis to consider the insurance market, the changing prices of oil, and so on.

Mr. STENHOLM. The second part of this question you answered in your earlier statement concerning the cost.

Mr. PORTER. Yes, sir.

Mr. STENHOLM. In assessing the impact on generators, is EPA considering the cumulative effect of new environmental regulations under RCRA?

Mr. PORTER. We are. One reason I wanted to show you the chart with all the various regulations impinging on people is that we are looking at our underground storage tank issues where we have two or three different regulations coming out on those and we are working very hard to try to ensure those are compatible. We are taking a hard look at that.

Mr. STENHOLM. On what basis does the agency believe that a burner, an asphalt plant, a cement kiln, or steel mill would willingly subject itself to stringent and costly regulation under RCRA when the alternative, that is burning virgin fuel oil, involves no regulatory burden and only about a 5- or 10-cent per gallon difference in price?

Mr. PORTER. That is certainly an excellent question. We have a tradeoff here. We are very concerned about some of the constituents, heavy metals and other things which are in some of the used oils. We are very concerned about these getting in the atmosphere. It is certainly true that with the price of crude being what it is now, the use of virgin oil may look attractive in some cases. So we are looking at how to encourage recycling which the law asks us to do and also to protect human health and the environment.

If we had no regulation, it would be easier for them, but I am not sure I would be meeting the other part of my charge, which is to keep these contaminants from going into the air.

Mr. STENHOLM. In light of the testimony you have received from many of the States who are doing a superb job in understanding the economics of the used oil management system and putting that knowledge to work for the benefit of public health and environmental safety, I would encourage you to look at the self-defeating economic implications of EPA's listing and management proposals.

As you know, the regulatory impact analysis predicted that under the proposed rule, asphalt plants would increase their consumption of used oil fuel by three times.

Given the stringent regulatory burden contemplated by the proposed rule, does the agency seriously believe that there will be any increase in the used oil fuel purchased by asphalt plants.

Mr. PORTER. Again, I am not sure I can answer that today. We are looking into that since the ground rules have changed so much since the time we conducted the regulatory impact analysis. That is exactly the type of thing we are looking at as we redo the analysis.

Mr. STENHOLM. If large quantities of used oil are not to be burned by industrial users, where do you expect the used oil will go?

Mr. PORTER. Well, there are a number of things that may happen. Burning is not the only option. You can treat the oil for disposal as we do listed hazardous waste. You can recycle it, re-

refine it and make it into lube oil again. Burning is not the only option. There are other options besides burning.

Mr. Stenholm. Good options?

Mr. Porter. I don't want to draw too much on what the best option is today because we are looking at that. I think recycling is a good option—you start out with lube oil and if you get back to lube oil, that is a good option.

Much used oil is destined for disposal now and in the future because when you recycle, you still have a purge stream or a blowdown from these operations—100 percent isn't recycled. We are concerned about the part that goes to disposal and some of that will have to be treated.

Mr. Stenholm. Under the EPA's listing proposal service stations would face new liability under CERCLA. Too, they would be subjected to RCRA large quantity generator rules if they accept contaminated used oil from the public.

Why would any small service station operator be interested in continuing to accept used oil if this listing is made?

Mr. Porter. There is a terrible stigma attached with dealing with used oil if it is listed as a hazardous waste. We heard a lot of testimony today, and the 800 comments you received, that people say just that. My job is not just to throw up my hands and say, we can put it all in the ground. The legislative history in the law makes it fairly clear that we are to tilt toward protecting the environment.

In other words, we are supposed to encourage recycling and look very hard at protecting the environment. We are up against some tough decisions to make sure we encourage recycling, but we also must try to solve the problem in terms of environmental control.

Mr. Stenholm. I agree, it is a tough propostion to balance all the views and needs of this country, but I come back to the question so basic to the oil recycling issue. Perhaps you cannot answer it any better today than you have just done. It seems to me that in the case of recycled oil, if you are going to do it economically, the operator of a small service station is key to the overall plan.

But EPA is designing a program or a regulation that will cause the station operator to get advice from his lawyer that the operator must carry liability insurance, and comment from the accountant that the operator cannot afford environmental liability insurance or that such insurance is not available at any price. Can't EPA resolve this conflict by bringing appropriate and reasonable balance to its proposed regulation of used oil?

Mr. Porter. We are trying very, very hard not to do that, because we do think recycling is very important, and we are trying to figure out a way to encourage it.

Ms. Williams. There is a very important interplay between the listing decision and the management standards. It was raised in previous comments this morning, the concept of what size generator—how much somebody can generate before they get caught into the recycling system. This is a crucial issue. We have specified 1,000 kilometers per month, and to the degree there might be more optimal cutoff points, that affects who gets brought into that situation.

We want to get the largest amount of used oil into the system, and we will be looking carefully at where we can make that cutoff point for recyclers.

Mr. STENHOLM. You mentioned some of the reactions of the States, three or four agreeing with the listing, and seven or eight opposing it. Would you have any further comment on the reaction of the States?

Mr. PORTER. The comments are not what you would expect in all cases. Some people who list used oil themselves, don't want us to list, because they talk about how it would interfere with their program.

We are going beyond the States that have commented and are talking to other States because we would not like to disrupt State programs any more than is absolutely necessary. There are a lot of things, we have to get behind the scenes to learn who is for and against it.

We have to look into the details of some of their programs, so we know exactly how we would impact them.

Mr. STENHOLM. This is quite a detailed question. A respected oil industry publication recently described EPA's used oil policy as schizophrenic.

In the Agency's November 29 listing proposal, EPA notes that based upon 1982 automotive and industrial new sales of 1.2 billion and 1.171 billion gallons, respectively, it is estimated 746 million gallons of automotive used oil and 402 million gallons of industrial used oil are generated each year.

Approximately 75 percent of the total generated or about 660 million gallons are currently managed by collectors, processors, refiners and end users, and will be brought under regulatory control.

The remaining 43 percent, or 488 million gallons, result from do-it-yourself oil changers, agriculture, construction machinery operators, and other small generators of industrial oils who often dispose of their oils offsite rather than accumulate them or take them to a point of accumulation.

In the case of household waste, EPA specifically excludes them from being listed as hazardous waste based on the Agency's correct and valid understanding that Congress did not intend to control the household waste under RCRA.

EPA would list household used oil at that point at which it is accumulated or aggregated at a collection center such as a service station or an auto center. EPA recognizes that a substantial portion of all of the used oil generated in the United States each year comes from homeowners, and while not proposing to regulate homeowners, EPA's listing regulation undermines State efforts to achieve household participation in the used oil management system.

How does EPA square this proposed policy with the States who have strenuously objected to the blanket listing of used oil as hazardous?

Mr. PORTER. Let me take a deep breath here. It is similar to the issue we discussed before—having to look at the State programs in detail and decide how do we impinge on those. That is a reasonably good analysis of the issue in the sense that where they are captured in the system is when they go to the collection point. The do-it-yourselfers are not covered, per se.

Again, we are going to have to look carefully at what the States are doing and try not to make that happen. That is the reason I wanted to show you today all these alternatives. We have opened up the process, we have enough comments that we are not on any particular track to say we are proud of our authorship last fall, but we are not backing away from that.

We are going to look at the whole range of options.

Mr. STENHOLM. In its March 10, 1986, follow up to the November 29 listing, EPA argues that the insurance issue is not a real issue, because, even if used oil were not listed as a hazardous waste, but contained hazardous substance at levels exceeding those normally found in petroleum, the used oil would be and currently is subject to Superfund liability.

Is not the EPA asserting authority where none exists?

Mr. PORTER. Under Superfund?

Mr. STENHOLM. Yes.

Mr. PORTER. We on the Superfund Program are interested in the contaminants in whatever the carrier is. Some of these used oils have lead at very high levels, cadmium, chromium, and other materials either that have been put in later in terms of adulteration of mixture or whatever, but we are trying to get at those in the Superfund Program.

We are trying to get at the dioxin which was mixed with oil put on roads, and so forth, so I don't think we are inventing anything new there. We look at these Superfund sites, some 705 chemicals that are in the Superfund list of chemicals we can respond to, and some of those constituents are in that list.

Mr. STENHOLM. Didn't you list all used oil regardless of constituency?

Mr. PORTER. Yes; we did it in the proposal. We said, we are trying to clear up that ambiguity as to whether used oil, or the things that—we were trying to go the other way. We were trying to not have people exclude used oil under the so-called petroleum exclusion.

There is a petroleum exclusion under Superfund which says unadulterated petroleum oil is excluded from Superfund. We have not decided how to handle it finally, we wanted to make it clear that used oil was not covered by that same exclusion as used oil has some concern to us in the Superfund Program.

Mr. STENHOLM. That was in the original proposal, but it sure sounded to me like EPA was avoiding completely the petroleum exclusion in that previous recommendation. When you extended the Superfund liability to unadulterated used oil.

Ms. FRIEDMAN. Lisa Friedman, with EPA. It has always been the Agency's position that Congress certainly didn't intend for the petroleum exclusion to exempt all hazardous substances that happen to be mixed with petroleum products from CERCLA liability or notification responsibility.

You have a wide range of possible products that might be covered under that exclusion going all the way from oil as it comes right out of the refinery to oil adulterated with hazardous substances.

We have to determine on a case-by-case basis which are subject to the petroleum exclusion. The oil coming out of the factory or the the refinery is part of that exclusion. Something adulterated with hazardous waste is not. We are not prepared to say that things like crank case oil, oil that has been contaminated with hazardous substance as a result of use is out, under Superfund is not part of the petroleum exclusion.

Mr. STENHOLM. Mrs. Long, any further questions?

Mrs. LONG. No.

Mr. STENHOLM. Mr. Combest.

Mr. COMBEST. Assume that crank case oil was listed as a hazardous material, and it is obvious from your information, and other testimony I think that is going to be given here today, a lot of that has been going not into the chain for disposal or collection, but probably into Dempsey dumpsters or whatever.

Would that require, if that designation were made, would that require then that all of the sanitary landfills and so forth around any community that has been collecting trash would have to go back in and be cleaned up?

Mr. PORTER. In the Superfund Program, we look at various sites around the country that appear to be heavily contaminated, and if for various reasons they score above a certain score, they are put on the Superfund list. A few had been municipal dumps, and most have not.

It is hard to say ahead of time, but it would not necessarily by any means involve going and looking at all those dumps.

In the Superfund Program, we look at sites based on knowledge we have in terms of potential ground water contamination, and other things, come at it from that angle, not the angle of what we saw going there.

The Superfund Program relates to uncontrolled and general abandoned sites, not ongoing sites. What we are trying to do with the used oil regulations, is to see how they might relate to the ongoing management system in the country, whether they should be regulated as a hazardous waste or not as hazardous waste, and what kind of standards should apply to recyclers.

I don't think you can draw on cause and effect, that if oil is going to municipal landfills, that therefore becomes a Superfund site, or is even looked at as a Superfund site.

We start from the other angle. We start looking at uncontrolled sites that appear to be causing a problem, and we decide, if they need to be cleaned up.

We decide what is there, cadmium, dioxin, phenol, or whatever, and if there is enough material there, if they can enter pathways to the ground water supply, for example. Then it may become a Superfund site.

We calculate to see if it becomes a Superfund site, but it does not start by the fact that oil went there, or something else went there.

Mr. COMBEST. Thank you.

Mr. STENHOLM. I have no further questions. We thank you very much for your appearance here today, your testimony and for what I perceive to be a willingness to listen and to work with any and all parties involved in this very difficult situation.

Mr. PORTER. Thank you very much.

Mr. STENHOLM. Next I will call Dr. Cliff Willey, chief of technical services, Maryland Environmental Service, Annapolis, MD. Mr. Willey.

TESTIMONY OF CLIFF R. WILLEY, CHIEF OF TECHNICAL SERVICES, MARYLAND ENVIRONMENTAL SERVICE, ANNAPOLIS, MD

Mr. WILLEY. Good morning. I am Cliff Willey, and I manage Maryland's Used Oil Recycling Program. I have provided some written testimony, so I am just going to highlight some of the comments I have.

Maryland's program was started about 8 years ago. The heart of the program is a network of volunteer used oil collection facilities, service stations, garages, auto repair facilities, and the like.

We have roughly 750 volunteer collection locations, and States with similar programs include Virginia with about 1,200, Pennsylvania with about 2,500, California with more than 2,400, and there are a number of other States, such as Michigan, Maine, Alabama, and some others that have similar programs.

Our problem with the regulations is this: This has been said already, Mr. Chairman. The automotive services industries have made it very clear that under EPA's proposed regulations, future participation in State used oil recovery programs would be unlikely.

The organization representing Maryland service stations stated that if used oil is listed as hazardous waste, they have not choice but to recommend that their members reconsider their status as voluntary collectors.

Since the automotive service industries have commented extensively to EPA, and I am sure they will follow me and make further comments regarding the regulations, I will keep my comments very brief, and just give you the following brief summary from our prespective of problems with the regulations.

First of all, the regulation of used oil is necessary. We do not argue that. Let's make sure that the cure is not worse than the disease.

We believe used oil that is recycled should be regulated as something other than hazardous waste and allowances must be made for some contamination of used oil with solvents and gasoline, if we are to expect service stations or anyone else to voluntarily accept do-it-yourself used oil.

A too restrictive approach, for example, the 1,000 parts per million halogen content rebuttal presumption, we feel, may lead to more rather than less environmental pollution if do-it-yourself oil is not collected.

We believe data needs to be provided to the automotive service industries to convince them that do-it-yourself oil can be taken without significant risk, or it may possibly show that a separate collection program is needed, but I think that data needs to be provided.

There may even need to be a provision, and this could be either State or Federal, for offsetting the cost of disposal, should used oil collected by a voluntary collection facility from do-it-yourselfers have to be occasionally disposed of as a hazardous material.

In the long run, this may be much more cost-effective than trying to set up alternative programs to collect this oil.

Last, and this has really nothing to do with EPA's proposed regulations. Let's pay more attention to public education and waste awareness and develop some reasonable alternatives for individuals and small businesses with small quantities of solvents, gasoline and other wastes than need to be kept out of the environment, as well as out of waste oil collection tanks.

[Mr. Willey's prepared statement follows:]

PREPARED STATEMENT OF CLIFF R. WILLEY, CHIEF OF TECHNICAL SERVICES, MARYLAND ENVIRONMENTAL SERVICE, ANNAPOLIS, MD

My name is Cliff Willey. I am Chief of Technical Services for the Maryland Environmental Service, which is an agency of the Maryland Department of Natural Resources, and I manage Maryland's Used Oil Recycling Program. I was requested to attend today's hearing to comment on how EPA's proposed rulemaking might affect this type of program.

It has been estimated that hundreds of millions of gallons of used oil are dumped into the environment each year by some individuals and businesses who change their own oil - the "do-it-yourselfer."

Consultants for EPA estimated that in 1983 about 200 million gallons of "do-it-yourself" automotive oil were generated and only 14 percent was collected for recycling. Of the remainder, 118 million gallons were thought to have been dumped and 40 million gallons placed in with trash.[1] Industry estimates are higher, indicating 250 to 350 million gallons of "do-it-yourself" oil may be disposed of annually outside the used oil management system.[2]

Additionally, some waste oil from farm, small business, and construction equipment also is not being controlled - the combined estimate for these sources and automotive oil for 1983 was 488 million gallons annually or 43 percent of waste used oil generated.[3]

In response to this problem, many states have set up programs to encourage the collection and recycling of "do-it-yourself" waste oil - Maryland started its program eight years ago.

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[1] Composition and Management of Used Oil Generated in the United States, Franklin Associates, Ltd., Nov. 1985. Prepared for U.S. EPA, p. 1-8

[2] Lundberg Letter, Vol. XIII, No. 25, April 18, 1986.

[3] Federal Register, Vol. 50, No. 220, November 29, 1985, p. 49265.

The heart of our program is a statewide network of volunteer used oil collection facilities. Most of these are service stations, automobile dealerships, large stores with auto repair facilities, and independent garages - actually, mostly small businesses themselves. A toll-free phone line is maintained by the Maryland Environmental Service to inform residents of the locations of these collection facilities.

Maryland has roughly 750 volunteer collection locations. States with similar programs include Virginia with about 1200, Pennsylvania with 2500, and California with more than 2400. Michigan, Maine, Alabama, and numerous other states also have programs.

Our problem with the regulations is this: the automotive services industries have made it very clear that, under EPA proposed regulations, future participation in these used oil recovery programs would be unlikely. The organization representing Maryland service stations stated that if used oil is listed as a hazardous waste, they have no choice but to recommend that their members..."reconsider their status as voluntary collectors...."[4]

What are the problems? The automotive services industries have commented extensively to EPA so I will list just a few.

(1) The fear of environmental impairment liability under CERCLA (Superfund) may drive participants from the program. (However, placing "clean" used oil in a separate regulatory category may not relieve this problem because contaminated oil would still be a hazardous waste and household wastes such as solvents and old gasoline mixed with oil are at least perceived to be a potential source of contamination.)

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[4] Statement submitted to Docket Clerk, Standards of Recycled Oil: Listing of Used Oil, February 11, 1986, by the Greater Washington-Maryland Service Station and Automotive Repair Association.

(2) Another problem appears to be the level at which traces of chlorinated hazardous waste, usually solvents, cause used oil to be treated as a hazardous waste. (The "rebuttable presumption" is that oil with a total halogen content of 1000 ppm is deemed to be hazardous.[5]) Some leeway must be given if we expect to have volunteer used oil collection. Although we can try to educate the public that solvents should not be included with its waste oil, accidental or purposeful inclusion is bound to occur.

(3) There is the problem of the cost of getting rid of used oil. In the last few weeks transporters have begun charging 10 to 30 cents per gallon to pick up used oil in Maryland and some collection facilities are refusing off-premise used oil. It has been speculated that the proposed EPA regulation would only exacerbate this problem and may even be part of the reason for the current increase.

Let me leave you with the following summary comments from our perspective:

(1) The regulation of used oil is necessary - there is no arguing that; but let's make sure the cure is not worse than the disease.

(2) We believe used oil that is recycled should be regulated as something other than as a hazardous waste and allowances must be made for some contamination of used oil with solvents and gasoline if we are to expect service stations or anyone else to accept do-it-yourself used oil A too restrictive approach, e.g., the 1000 ppm halogen content rebuttable presumption, may lead to more rather than less environmental pollution if do-it-yourself oil is not collected.

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[5] Federal Register, Vol. 50, No. 230, November 29, 1985, p. 49217.

(3) Data needs to be provided to the automotive services industries to convince them that do-it-yourself oil can be taken without significant risk - or it may possibly show that a separate collection program is needed for "do-it-yourself" waste oil.

(4) There may even need to be a provision, either State or federal, for off-setting the cost of disposal should a used oil collection facility have to occasionally dispose of oil as a hazardous material. This may be more cost effective in the long run than trying to set up an alternative program to collect "do-it-yourself" oil.

(5) Last, and this has nothing to do with EPA's proposed regulations, let's pay more attention to public education and waste awareness and develop alternatives for individuals and small businesses with small quantities of solvents, gasoline, and other wastes that need to be kept out of the environment and out of waste oil collection tanks as well.

Mr. STENHOLM. Thank you, Dr. Willey.

Mrs. Long.

Mrs. LONG. To what extent does the State of Maryland purchase used oil? Is it a big factor?

Mr. WILLEY. Maryland has a law that says that the State should purchase to the extent possible recycled oil. However, the State does not, for its general use automobiles, does not maintain its own maintenance facilities, so it is done by normal service stations, which makes it difficult to carry out that policy.

Mrs. LONG. Then you would say that the economic impact wouldn't be too great, if the State is not purchasing used oil anyway. Is that true?

Mr. WILLEY. We are talking about the use of recycled oil as lube oil. I understand, that was your question? We do not do that to any significant extent, if at all.

Mrs. LONG. Thank you.

Mr. STENHOLM. Mr. Combest.

Mr. COMBEST. You mentioned that just in the past few weeks, the transporters have begun charging from 10 to 30 cents?

Mr. WILLEY. That is correct.

Mr. COMBEST. Why are they now charging?

Mr. WILLEY. Well, one reason that is obvious, I think the drop in the cost of virgin oil prices has made the profit margin smaller, so that they have had to charge, but it also has been speculated, and just speculated, that the proposed regulations, as well as the final regulations on burning may also have entered into market losses, and caused part of that problem.

Mr. COMBEST. Is this the first time during this 8-year period you have had this program that there has been a cost for picking up?

Mr. WILLEY. That is correct.

Mr. **Combest**. Obviously, if in fact an individual is going to have to pay for it, many of them are going to quit taking the do-it-yourself, as a voluntary disposing unit for used oil.

Mr. **Willey**. Given some time we might be able to offset the cost problem with tax incentives or some other mechanism within the State. We couldn't do it overnight. But we can't offset the problem with listing as a hazardous waste.

Mr. **Combest**. You mentioned as your last point the fact of education, public service, whatever, in trying to: No. 1, make people aware of the problem; and No. 2, to try to keep some other objects out of the waste oil collection tax, gasoline, some other solvents, Mr. Willey, are you doing any type of public service to where you are talking about this problem, letting people know?

Mr. **Willey**. We have studied it, but have not implemented an amnesty day, household waste program.

Mr. **Combest**. That is a very good point, because it is very common in service stations around the areas, that all of your used solvents, whatever they may be, are going to go into one collection tank, and that may be where the problem is coming from in finding other types of elements after it is collected, not from the oil itself, what the purpose of the collection pit is, but other things which are going into it.

The public service type approach, education, it could be very helpful on that. Thank you, Mr. Chairman.

Mr. **Stenholm**. Dr. Willey, section 5 of the Used Oil Recycling Act of 1980 establishes authority for EPA to assist the States in their respective development of programs for recycled oil. These discretionary State programs are to be designed to achieve a number of objectives including, but not limited to, assuring that used oil is collected, transported, treated, stored, reused, and disposed of in a manner which does not present a hazard to the public health or the environment.

My first question is, what has been your experience with EPA in working to develop, fully implement and expeditiously carry out your program in the State of Maryland?

Mr. **Willey**. We, as well as a number of other States, have a problem of lack of funds, really, to do a satisfactory job of public education.

We received at one time a small amount of money through DOE based on the energy recovery value, and that money is no longer available, so we receive no Federal funds.

Our State, as well as a number of other States, has not really put together a significant budget for these types of programs. I would like to see more Federal money for this type of work, for a massive Federal educational program.

Mr. **Stenholm**. Unfortunately, that is something we don't have a surplus of, either.

Mr. **Willey**. We got to solve the problem some way.

Mr. **Stenholm**. Section 6 of the act, provides that the Administrator may, upon request, provide technical assistance to assist in the removal or modification of legal, institutional or economic and other impediments to the recycling of used oil.

You stated there has not been any economic assistance, at least to the degree you would feel more comfortable with, coming from the Federal Government, EPA.

What about the technical assistance from EPA?

Mr. WILLEY. There has been no direct assistance. They may have published some literature that could have been helpful, but I can't recall exactly what that would have been.

Mr. STENHOLM. Do I denote that you are suggesting that we in the Congress have passed a law and encouraged it being carried out, and we have told you what to do, provided you with no money to do it, and very little, if any, technical assistance to assist you with carrying out the law?

Mr. WILLEY. That is what it seems to come down to.

Mr. STENHOLM. If EPA does what they have proposed to do, it would make your job virtually impossible?

Mr. WILLEY. That is correct.

Mr. STENHOLM. Next, we will call panel 5, Mr. Vic Rasheed, executive director of the Service Station Dealers of America, Inc. accompanied by Jim Daskal, counsel; Mr. Will Bradley, partner, B&D Oil Co., Lebanon, MO., and cochairman, Government Affairs Committee, National Association of Truck Stop Operators, accompanied by Alan J. Thiemann, general counsel; Mr. Kent, representing the Petroleum Marketers Association of America; Jimmy Payton, owner Payton-Wright Ford-Subaru, Inc., Grapevine, TX, and Robert V. Rush, Chevy Chase Exxon.

Mr. Rasheed.

TESTIMONY OF VIC RASHEED, EXECUTIVE DIRECTOR, SERVICE STATION DEALERS OF AMERICA, INC., WASHINGTON, DC., ACCOMPANIED BY JIM DASKAL, COUNSEL

Mr. RASHEED. First, I would like to introduce our counsel, Jim Daskal, who will be available to answer some technical questions.

Mr. Chairman, the Service Station Dealers of America thank you for these hearings and the sensitivity you have shown to a growing national problem, what to do with millions of gallons of used motor oil.

I represent 60,000 very frustrated service station dealers who once took pride in the fact that they voluntarily were responsible for making the Nation's only effective used oil collection program work.

Scores of them would have been here today to turn in their public used oil collection signs, but for necessary congressional security restraints. I believe we have one back here, to turn in their public used oil collection signs, and this was the sentiment that they wanted to use this as a forum, to come in with all their signs and hand them over to EPA, but security arrangements at the door made that sort of difficult.

EPA has done a good job of completely disillusioning our dealers who, for the most part now, refuse to accept used oil from householders and do-it-yourselfers because of EPA's proposal to list used motor oil as a hazardous waste, even if it is to be recycled.

We believe EPA's action will provide to be counterproductive and will result in new high levels of used oil being dumped onto the ground, in trash cans, eventually all ending up in the Nation's ground water.

Our situation perhaps can be best illustrated by an irreverent movie called Ghostbusters. In it, an enterprising trio had devised a system of ghost containment.

EPA got wind of it and took over the whole operation, and all hell broke loose; and, of course, the ghosts escaped in a total disaster.

SSDA believes that the November 29, 1985 proposal to list all used oil as a hazardous waste has already done serious harm to the Used Oil Recycling Program.

The Service Station Dealers of America is now being besieged by calls from service station dealers in many States complaining about the growing unavailability of waste oil collection service.

Dealers who were receiving 25 cents per gallon for their used oil are now paying up to 25 cents per gallon to have it collected. Many complain that they cannot get it collected at all.

In Texas recently, a dealer who collected his used oil in seven 55-gallon drums was told by his collector it would cost him $70 per drum to have it taken away, plus $348 to check its explosive content.

What it means, I don't know.

Dealer Neil Rogers in Newport News, VA, has a 1,000-gallon storage tank for used oil collection and normally accepts used oil from 20 to 30 do-it-yourselfers each weekend from a nearby apartment complex. His used oil collector told him, "Once it is declared a hazardous waste, no one will touch it."

He must cease to accept used oil from the do-it-yourselfers but as a resident and avid fisherman, agonizes that they will get rid of the used oil by dumping it in trash containers, et cetera, and oil will find its way into local wells and streams, and into the fish he eats.

The final result will be more dumping of used oil directly into the environment by what is by far the largest segment of the motor oil department, do-it-yourselfers.

Do-it-yourselfers, or backyard mechanics, now purchase 70 percent of the motor oil sold in this country today. This practice is encouraged by major oil companies whose wholesale price to service stations is over twice the retail price any consumer can buy oil for at supermarkets, drug stores, et cetera.

We have documented cases of oil which cost dealers around $1 per quart being retailed for one-fourth of his cost. Oil companies continue to prefer to sell to the DIY market while forcing their franchised dealers to subsidize these sales. The discount stores have no used oil collection facilities.

Do-it-yourselfers, or DIY's, in 1985 bought 575 million gallons of motor oil, and after subtracting for burning during use, had 414 million gallons to dispose of. This 414 million-gallon market is completely unregulated by EPA, whereas the 240 million gallons sold by service stations and other marketers are fully impacted.

The DIY's will recycle only 60 million gallons of their used oil, 40 million gallons through service stations, and will dump 350 millions into the environment.

Clearly, sound environmental policy would encourage the recycling of more do-it-yourselfer oil.

EPA's proposals would not have that effect for several reasons; rather, they would make used oil a legal and economic burden. The proposal is schizophrenic; properly recycled oil is penalized, DIY dumped oil is ignored.

The listing of used oil as a hazardous waste marks a dramatic extension of Superfund to cover the ordinary, environmentally sound recycling activities of service stations.

EPA, when confronted with this fact, has attempted to take the untenable position that used oil has been the subject of Superfund all along, and thus they are imposing only incremental costs. They cite the presence of Times Beach, MO and used oil recycling sites on the Superfund NPL list.

What EPA fails to state is that it is not used oil, but the presence of true hazardous waste, such as dioxin at Times Beach, which brings Superfund into play.

EPA is attempting to use a few extreme examples to justify extended Superfund exposure to environmentally safe recycling.

EPA's proposal marks a dramatic extension of Superfund to the ordinary recycling activities of service stations. In the unanimous views of SSDA's counsel and attorneys for our 43 State affiliates, our ordinary activities would not be subject to CERCLA but for the listing decision.

If the matter were to go to litigation, a distinct possibility, SSDA has no doubt that EPA could not show that the petroleum exclusion would be inapplicable to ordinary used crankcase oil.

Even if our attorneys believed that the listing decision would not significantly increase dealer exposure to CERCLA liability and advised them accordingly, many dealers still simply would not handle used oil in any event, particularly do-it-yourselfer oil.

Dealers are extremely concerned that their whole tank of used oil can be contaminated by one gallon of toxic substance brought in by a DIY. The result would be the whole tankful becoming a hazardous waste. The cost of disposal would be huge.

Many dealers simply are not going to increase their perceived risks even if counseled that the CERCLA exposure is not significantly increased.

SSDA continues to desire to work with EPA and Members of Congress toward the following goals:

One, increased DIY oil being brought into the used oil management system.

Two, elimination of environmentally unsound recycling practices.

Three, expansion of collection facilities.

Four, management, 1,000 gallons. Insurance not available. Better to collect and remove from environment air pollution incidental fallout.

We have met with the EPA's office, the ombudsman, Karen Brown, and we have discussed an education program, and a public awareness problem with her, and we are very eager to cooperate with EPA in that department.

[Mr. Rasheed's prepared statement follows:]

PREPARED STATEMENT OF VIC RASHEED, EXECUTIVE DIRECTOR, SERVICE STATION DEALERS OF AMERICA, INC., WASHINGTON, DC

Mr. Chairman, Members of the Committee:

The Service Station Dealers of America welcomes this opportunity to testify on the effect of EPA's proposal to list used oil as a hazardous waste and proposed management standards.

SSDA believes that the November 29, 1985, proposal to list all used oil as a hazardous waste has already done serious harm to the used oil recycling program.

The Service Station Dealers of America is now being besieged by calls from service station dealers in many states complaining about the growing unavailability of waste oil collection service.

Dealers who were receiving 25¢ per gallon for their used oil, are now paying up to 25¢ per gallon to have it collected. Many complain that they cannot get it collected at all. In Texas recently, a dealer who collected his used oil in seven 55-gallon drums was told by his collector it would cost him $70 per drum to have it taken away.

Dealer Neil Rogers in Newport News, Va., has a 1,000 gallon storage tank for used oil collection and normally accepts used oil from 20-30 do-it-yourselfers each weekend from a nearby apartment complex. His used oil collector told him, "You won't find anyone who will haul it away free after April 1," and "once your tank is full you will have to get rid of it." Also that, "Once it is declared a hazardous waste, no one will touch it."

His tank currently has 800 gallons of used oil in it which he will have to pay to have picked up. He must cease to accept used oil from the do-it-yourselfers but as a resident and avid fisherman, agonizes that they will get rid of the used oil by dumping it in trash containers etc., and oil will find its way into local wells and streams ... and into the fish he eats.

Massachusetts dealers who were beng paid 35¢ per gallon are now facing charges of 20¢ per gallon for used oil pick-up.

The final result will be more dumping of used oil directly into the environment by what is by far the largest segment of the motor oil department: do-it-yourselfers.

Do-it-yourselfers, or backyard mechanics, now purchase 70% of the motor oil sold in this country today. This practice is encouraged by major oil companies who charge service stations over twice at "wholesale" the "retail" price any consumer can buy oil for at supermarkets, drugstores, etc. The proffered justification for this is that service stations are not in competition for the do-it-yourselfer market. We believe this is absurd, but the practice continues.

As a result, do-it-yourselfers, or DIY's, in 1985 bought 575 million gallons of motor oil, and after subtracting for burning during use, had 414 million gallons to dispose of. This 414 million gallon market is completely unregulated by EPA, whereas the 240 million gallons sold by service stations and other marketers are fully impacted.

The DIY's will recycle only 60 million gallons of their used oil, (40 million gallons through service stations) AND WILL DUMP 350 MILLIONS INTO THE ENVIRONMENT.

Clearly, sound environmental policy would encourage the recycling of more do-it-yourselfer oil.

EPA's proposals would not have that effect for several reasons; rather they would make used oil a legal and economic burden.

The listing of used oil as a hazardous waste marks a dramatic extension of Superfund to cover the ordinary, environmentally sound recycling activities of service stations.

EPA, when confronted with this fact, has attempted to take the untenable position that used oil has been the subject of Superfund all along, and thus they are imposing only incremental costs! They cite the presence of Times Beach, Missouri, and used oil recycling sites on the Superfund NPL list.

What EPA fails to state is that it is not used oil, but the presence of true hazardous waste, such as dioxin at Times Beach, which brings Superfund into play.

Moreover, in the 1984 debate over the Solid Waste Disposal Act Amendments (RCRA), considerable debate focused over small quantity generator regulation of service stations. If used oil were a hazardous waste, then the RCRA debate over service stations was a hoax because used oil quantities are sufficient to make SSDA members large quantity generators.

EPA is attempting to use a few extreme examples to justify extended Superfund exposure to environmentally safe recycling. At this point, we would like to insert our response to EPA's actions into the record.

RESPONSE TO EPA QUESTIONS

1. Superfund Liability As Impacting On Used Oil Recycling

Listing used oil as a hazardous waste would dramatically increase Superfund exposure for service station dealers, especially in light of the low 100 lb. (13 gallons) reportable quantity.

EPA states that generators face Superfund liability in cases where "used oil contains hazardous substances at levels exceeding those normally found in petroleum," or, in other words, that where petroleum exclusion would not apply Superfund liability would attach. Our experience is that such existing CERCLA exposure is minimal.

EPA's proposal marks a dramatic extension of Superfund to the ordinary recycling activities of service stations. In the unanimous views of SSDA's counsel and attorneys for our 43 state affiliates, our ordinary activities would not be subject to CERCLA but for the listing decision. If the matter were to go to litigation, a distinct possibility, SSDA has no doubt that EPA could not show that the petroleum exclusion would be inapplicable to ordinary used crankcase oil.

Even if our attorneys believed that the listing decision would not significantly increase dealer exposure to CERCLA liability and advised them accordingly, many dealers still simply would not handle used oil in any event, particularly do-it-yourselfer oil.

Many dealers simply are not going to increase their perceived risks even if counselled that the CERCLA exposure is not significantly increased.

Another key factor is the perceived risk of those parties who have exerted enough economic control over the used oil recycling industry to make continuance of our environmentally sound activity uneconomical.

Insurance, if available at all, will increase in cost as a result of the listing.

Secondly, oil company, jobber and independent marketer owners of service station facilities may decide that the environmental liability risks are such that continuing to market through full service locations which currently offer used oil collection facilities would be uneconomical, and thus conversion to a facility not offering service would be warranted.

EPA must understand that the majority of service stations in the country are independently operated, but the marketing facility is owned by a major oil company or jobber which leases it to the dealer, who operates it as an independent businessman.

Attached as an exhibit is data from the Lundberg Letter which shows that in 1981, 31% of the gasoline stations offered no bays, and thus had no used oil recycling facilities. That percentage has grown to 43% of those facilities today.

Listing used oil as a hazardous waste would provide a significant impetus to this trend and will result in fewer facilities being able to handle used oil in addition to reducing the number of facilities willing to handle used oil.

In any event, SSDA views the "perception" versus "reality" issue raised by EPA as a red herring. Even an all-out effort by the regulated community to deal with perception problems would fail to prevent drastic decreases in the number of facilities willing to handle used oil. Just as travellers continue to fear flying and many will avoid it, so will generators avoid dealing with hazardous waste.

In our industry, the listing will create a climate in which acceptance of do-it-yourselfer oil becomes too much of a legal and economic burden.

SSDA is putting EPA on notice that if it decides to list, the advice of our legal counsel and counsel to our 43 state affiliates is as follows:

A. That used oil generated off premises should not be accepted for collection under any circumstance.

B. Dealers should re-evaluate feasibility of continuing to offer oil change services in light of increased CERCLA exposure, increased regulatory costs, and continuing price discrimination by suppliers coupled with attendant loss of goodwill.

C. Constitutional challenges to statutes such as New York's, which require acceptance by dealers of used oil generated off premises, should be prepared for filing upon designation of used oil as hazardous waste.

D. Oppose state legislative initiatives to mandate acceptance of used oil generated off premises.

E. State affiliates must make every effort to advise members that if used oil is designated as a hazardous waste, ordinary, proper recycling activities become subject to Superfund reporting requirements and exposure to CERCLA is greatly increased.

SSDA submits that by listing used oil as a hazardous waste, EPA is truly going "where no man has gone before."

This unwarranted extension of Superfund liability makes acceptance of DIY oil by service stations too great a legal risk to bear.

Moreover, the direct costs imposed by a listing decision will destroy the economics of the industry, as will the indirect costs imposed on recyclers and other persons upstream in the recycling system, which will be passed on to service station dealers in the form of lower prices paid for used oil.

The Regulatory Impact Analysis performed by EPA tried to justify the listing on the grounds of an incredible assumption that used oil recycling would increase.

We believe that the Regulatory Impact Analysis is totally devoid of merit, and represents a waste of taxpayers' money deserving of a Golden Fleece Award from Senator Proxmire. We pointed out to EPA, and will point out to the Committee, the flaws we found in the RIA:

FLAWS IN THE REGULATORY IMPACT ANALYSIS

At the outset, SSDA would like to point out that the Regulatory Impact Analysis could have been significantly improved to the point of actually being accurate, had the consultants bothered to do more than de minimis consultation with the generator community. The RIA candidly admits that "generator reaction cannot be gauged and may significantly alter the entire analysis." SSDA feels that the RIA could have provided EPA with much better guidance in this all important area.

SSDA finds several fatal flaws in the RIA's analysis of the economics of the used oil market. They include the following:

1. A grossly mistaken analysis of trends in prices of crude and virgin oil prices. (IV-25)
2. Failure to adequately consider the effect of regulatory costs on transporters, end-users, and other persons upstream in the recycling chain and how these costs will be passed on to generators, thus rendering used oil recycling uneconomical. (IV-
3. Citing the price as paid by collectors to generators as ranging from 10 to 30 cents per gallon. Our own survey indicates that in most areas dealers are paying to have used oil collected.
4. Excessive reliance on the assumption that re-refiners will have more oil available to them after regulation, and will be able to grow at the rate of 45% annually. (IV-22) If more oil were going to be going to re-refiners, (a proposition we strongly dispute) then why does the RIA fail to take account of the fact that "[e]conomics of re-refining constrain the

price that they (re-refiners) can pay for used oil to a level substantially below that which can be paid for used oil going into fuel markets." (IV-18) If more oil will go from generators to re-refiners, then the price paid to generators will fall.

5. Analyzing the financial impact on generators in terms of the overall profitability of the generator (IV-27). This is taking a macroeconomic approach to the microeconomic problem of the effect on profitability of the used oil component of the generator business. The RIA totally fails to take into account the fact that generators for whom used oil recycling is only a small part of their business WILL CEASE RECYCLING ACTIVITY should the costs and/or PERCEIVED RISKS of continuing used oil recycling become too great as they will under the proposed listing and management standards. The RIA notes in passing that "small generators may bear some indirect regulatory costs in the form of lower prices received for their used oil." (IV-27)

   In SSDA's view the combination of these indirect but very significant costs, together with declining virgin oil prices will render recycling activities uneconomical for our industry irrespective of the direct regulatory costs.

6. The abject failure to consider other indirect costs of regulation such as increased insurance costs if used oil is listed as a hazardous waste, costs to consumers in the form of reduced availability of oil changing services, and the environmental costs due to increased do-it-yourselfer market share together with the attendant dumping.

7. The benefit analysis is based on the false underlying assumption that recycling will be minimally impacted by the listing decision. It makes no analysis of the risks caused by increased do-it-yourselfer dumping. The benefit analysis performed is an empty academic exercise that does not comport with the real world.

EPA's conclusion that the used oil system can be viable after imposition of their proposed regulation is flatly wrong.

EPA also persists in the notion that a Federal listing decision can be justified because a state listing decision did not adversely affect recycling.

We pointed out to EPA that comparing state and Federal listing decisions is a totally invalid apples and oranges comparison due to different legal standards, less burdensome management standards, and out-of-state shipment of used oil. We stated in comments to EPA:

At the hearing in Washington, EPA seemed to believe that a listing decision had not had an adverse impact on recycling activities in those states; therefore, a national listing decision would also not adversely impact recycling. This "apples and oranges" comparison is invalid for several reasons.

First, the legal standards of potential liability are different in the listed states than the standards which would be applicable under CERCLA. Specifically, based on our reading of the applicable statutes and discussions with counsel of the appropriate agencies, defenses to liability that are precluded under CERCLA would be available under state law.

For example, under the New Jersey Spill Control Act, 58 N.J. Stat. Ann. 58:10-23.11 et. seq., liability, although strict joint and several, is imposed on the discharger, i.e., the direct discharger or someone otherwise directly responsible for the discharge under a reasonableness standard. In other words, if under the facts of the case it would not be reasonable to classify the generator as the discharger, liability would not attach to the generator under New Jersey law.

By contrast under CERCLA, a generator who has done everything humanly possible would still be subject to liability and would not have a defense against upstream persons responsible for the harm due to the contractual nexus between them.

In Missouri, under 10 Mo. Admin. Code 25-11.010 et seq., a generator is required to contract with a licensed transporter of used oil. Thus, state law in effect requires a generator to give up the "solely caused by a third party" defense under CERCLA, whereas this defense would exist under state law.

Aside from the fundamental unfairness of subjecting generators to potential liability for upstream recycling activities they have no knowledge or control over, a federal listing decision would adversely impact litigation against generators based on state common law grounds.

In short, the legal implications are far different for a federal listing decision than they are under existing state laws.

A second consideration is the degree of awareness of the legal limplications of a federal as opposed to state listing decision. In speaking to dealer groups and their attorneys in the affected states, it appears that while they appreciate the potential liabilities under CERCLA, they simply were unaware of any potential liability for used oil recycling activities under state law. There seems to be a direct correlation betwen the level of awareness and willingness to engage in recycling activities, including acceptance of oil from do-it-yourselfers, i.e., the more aware a generator was aware of potential liabilities, the less willing he is to deal with used oil at all. It appears that in this situation, ignorance is bliss.

A third factor differentiating a state and federal listing decision appears to be that the oil may be transported to other states which impose less burdensome requirements than the four listing states.

Finally, a federal listing decision would create the perception of far greater risk to insurers than the state listing decisions; thus, a federal listing decision would cause a far more severe economic impact than the state listing decisions. It appears that insurers, as well, are unaware of potential liability in the listing states. In any event, a federal listing would bring catastrophic economic consequences and cause used oil recycling to grind to a halt.

We now understand that EPA consultants are scrambling around states that have listed to find out if what really happened to recycling is consistent with what EPA asserted a few months ago.

SSDA believes that EPA is still on the wrong track, as ramifications of a Federal listing are far more onerous than a state listing.

CONCLUSION

SSDA continues to desire to work with EPA and Members of Congress towards the following goals.

1. Increased DIY oil being brought into the used oil management system.

2. Elimination of environmentally unsound recycling practices.

3. Expansion of collection facilities.

The popular movie "Ghostbusters" presented a situation where a system (ghost containment) worked well until EPA stepped in and caused major damage.

EPA's proposals, if adopted, would bring "Ghostbusters" to real life as the nation's premier recycling system grinds to a halt.

Mr. **Stenholm**. Mr. Bradley.

TESTIMONY OF WILL H. BRADLEY, COCHAIRMAN, GOVERNMENT AFFAIRS COMMITTEE, NATIONAL ASSOCIATION OF TRUCK STOP OPERATORS, ACCOMPANIED BY ALAN THIEMANN, GENERAL COUNSEL

Mr. **Bradley**. My name is Will Bradley, cochairman of the Government Affairs Committee of the National Association of Truck Stop Operators. With me is our general counsel, Alan Thiemann.

I would ask that my complete written statement and attachments be included in the record of this hearing.

Mr. **Stenholm**. Without objection.

Mr. **Bradley**. Thank you, Mr. Chairman.

Mr. Chairman, my partner and I own a truckstop, a petroleum distributorship, and a service station in Lebanon, MO. I truly understand all three small business viewpoints concerning recycling of used oil in this country today.

I also live in a rural area, so I am acquainted with neighbors, truckdrivers, and farmers who change their own oil. I know about the improper ways many of these folks dispose of that used oil.

I think the Environmental Protection Agency must do something to curb improper disposal of used oil in fields, landfills, and sewers. What I don't understand is how the proposed regulations and listing used oil as a hazardous waste is going to stop the do-it-yourselfer, who is the real problem.

The EPA's focus is all wrong. The Agency can't correct the abuse of used oil disposal by jumping on businesses like my truckstop or service station. We are doing the right things in storage and handling of used oil. A few week ago, I even paid $10 to have the last load of used oil hauled away from my truck stop for proper handling by a legal recycler.

Now the EPA wants me to accept additional liability for used oil at our facilities. EPA wants to list all used oil as a hazardous waste and this action will drastically change my liability. Used oil would fall under Superfund, and I would have strict, joint, and several liability for any used oil I handle, even if others are responsible for an accident. I cannot be responsible for products after they leave my premises. Insurance will be unavailable at any price.

Mr. Chairman, small businesses like mine need relief to prevent any loss of insurance if we are going to continue recycling used oil. We have a good record on this score.

NATSO's insurance program administrator points out that his company has never experienced a loss related to used oil at any petroleum marketing facility it has covered during the 4 years it has written policies. NATSO is very disturbed that the EPA is trying to render this record meaningless by listing all used oil as a hazardous waste.

NATSO has supported your efforts, Mr. Chairman, and those of my Congressman and friend, Ike Skelton, to preserve the legitimate recycling system. The Superfund bill, H.R. 2817, must be amended to continue the exemption of recycled oil.

We fully endorse Mr. Skelton's compromise language and we urge this subcommittee to send a letter to the conferees to adopt it. That approach will safeguard the environment, while ensuring that small businesses can remain active in the recycling program.

NATSO also asks, Mr. Chairman, that this subcommittee tell EPA to stop claiming that used oil is already covered under Superfund. That statement is wrong, and amounts to unfair lobbying by EPA against the amendment.

We do not mix used oil with any hazardous substances. If the exemption for used oil is not retained, the choices for the truckstop industry are not difficult ones. If we are faced with all the disposal costs and have strict, joint, and several liability thrust on us that raises insurance rates or makes insurance impossible to obtain at any price, we just won't handle used oil.

Finally, Mr. Chairman, I want to stress that truckstop operators feel that some of EPA's proposed management standards must be changed if we are going to continue as part of an effective and cost-efficient recycling system.

Truckstops collect a lot of used oil from vehicles, 44 quarts per truck on the average, and we already have relatively big storage tanks in the ground that require varying pickup schedules, so we need a realistic definition of small quantity generator that still enables us to reduce paperwork and other burdens. NATSO has therefore recommended that EPA adopt a 2,000-gallon-per-month threshold for small quantity generators.

Similarly, truckstops perform more oil changes in some months than in others, but overall they might be low enough in level to still be a small quantity generator. Therefore, NATSO recommends that EPA permit averaging this limit on an annualized basis.

Truckstop operators are already going to become subject to new underground tank regulations which will apply to used oil tanks. Even before those rules have been proposed EPA wants to require that some truckstops install secondary containment for used oil tanks at a cost of tens of thousands of dollars. This part of used oil management standards should be postponed until final tank regulations are adopted by the Agency.

Mr. Chairman, I ask that appropriate letters from the subcommittee be sent to the EPA to help resolve the serious problems truckstop operators have with EPA's proposals.

I appreciate the opportunity to share these views with you and the other members of the subcommittee. Thank you very, very much.

[Mr. Bradley's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF WILL H. BRADLEY, CO-CHAIRMAN, GOVERNMENT AFFAIRS COMMITTEE, NATIONAL ASSOCIATION OF TRUCK STOP OPERATORS

Good morning, Chairman Stenholm. My name is Will Bradley and I am a partner in B&D Oil Company, a petroleum jobbership, and in B&D Truck Port, a Texaco franchise truck stop located in Lebanon, Missouri. I am currently serving as co-chairman of the National Association of Truck Stop Operator's Government Affairs Committee, along with my partner Ed Day. With me today is NATSO's General Counsel, Alan J. Thiemann.

NATSO is the national trade association for the truck stop industry, representing almost 800 truck stop facilities across the country. NATSO members provide a significant percentage of the garage facilities along the Interstate and federal highways and thus we perform most of the heavy truck oil changes for independent owner-operators as well as those for fleet vehicles that are done on a non-scheduled basis. Consequently, NATSO members have a major interest in the used oil proposals currently *before the* Environmental Protection Agency because we are viewed as generators of substantial amounts of that product.

NATSO appreciates the opportunity to appear here today, Mr. Chairman, and we applaud the Subcommittee's desire to understand the affects small businesses will suffer if EPA's proposals become regulations. NATSO filed extensive comments with the Agency, first in response to the original notice of proposed rulemaking and then as supplemental comments addressing the Agency's reopening of the record. Copies of NATSO's two sets of comments have already been provided to staff, and we would be pleased to furnish additional copies for any member who desires them.

The truck stop industry believes that EPA's proposed listing of used oil as a RCRA hazardous waste is wrong, counterproductive, ill-advised, and not required for the agency to adopt management standards. Moreover, the EPA's alternative to list only used oil that is not recycled still seeks to require those of us opposing any listing to meet the burden of showing that such a partial listing is justified. NATSO strongly disagrees with this approach--it is the EPA's burden to show why any listing of used oil as hazardous is required to protect human health and the environment.

For example, Mr. Chairman, EPA's own Regulatory Impact Analysis shows that not even a single sample of used oil generated by a truck stop has been tested. This omission is critical because average used oil at a truck stop comes straight out of the vehicle crankcase into a trap and then into an on-premise storage tank. Since most truck stops have procedures in place to ensure that hazardous or harmful substances are not added to this "clean" used oil, our used oil has traditionally been highly-sought after product purchased by recyclers or rerefiners (who are otherwise regulated by EPA). Generally, then, used oil "generated" at truck stops (really, it is generated by the customer and collected at the truckstop) can meet reasonably set levels of impurities and hazardous constituents such as metals and halogens. In light of this situation, plus the fact that truck stop used oil tanks will be separately regulated by EPA, my industry is prepared to accept reasonable management standards.

What truck stop operators are not prepared to live with though, Mr. Chairman, are irresponsible regulations aimed only at small businesses who are involved in the handling of used oil and which will destroy the existing recycling system that most of these businesses participate in. It seems to be lost on the EPA that the major source of the problem is with individuals who change their own oil from their cars, trucks, farm vehicles, etc. and who then dispose of that waste oil by dumping it into the sewer, pouring it out in some field or leaving it in the trash where it winds up in a landfill. Hard as it is to comprehend, EPA is saying that used oil produced by "do-it-yourselfers" is not a hazardous waste, while the same used oil collected at a truck stop or service station is. Even worse, so many "do-it-yourselfers" fail to take any precautions in handling their used oil, that it is more likely to be mixed with hazardous substances. This is the type of activity that creates the threat of serious damage to the environment, not the fact that my truck stop does oil changes and sells that product to recyclers.

Let me briefly describe my reactions to and concerns over EPA's proposals. I ask that the Subcommittee send this message to the agency, because otherwise I am afraid EPA will not listen.

When I first heard EPA was suggesting that used oil be termed a hazardous waste, I immediately thought about the insurance problems that decision would create. A large number of truck stop operators, at least NATSO members, have had pollution insurance even in a market that has diminished the availability of such policies and increased premiums to several times their levels of two years ago. Those policies, however, usually insure the truck stop owner or operator only for losses at or near the facility.

EPA's approach would subject truck stops to strict, joint and several liability under Superfund if used oil becomes a RCRA listed hazardous waste given the current state of the law. Such expanded liability would apply to damages originating away from the truck stop, after the used oil has left the operator's hands and been sold to a legitimate authorized recycler. NATSO has been informed by the broker who administers the Association's pollution insurance program that this expanded liability will result in insurance being "unavailable at any price." I have attached to my statement a copy of this letter from the Planning Corporation to Mr. Thiemann, dated March 28, 1986.

Ironically, as that letter points out, NATSO's insurance broker has never experienced a loss related to used oil at any petroleum marketing facility it covers druing the four years it has offered such policies. NATSO is distressed at the prospect that this record is being rendered meaningless in the eyes of the EPA.

Mr. Chairman, if EPA pursues its proposed course of action, I do not think that many truck stop operators will risk continuing to perform oil changes and to handle used oil knowing that insurance will probably not be available if that activity falls under Superfund liability. Even raising substantially the price of oil changes (from today's range of between $90 and $150) would not guarantee that a truck stop operator who cannot obtain insurance could protect himself from financial ruin if someone else in the used oil recycling chain negligently caused a leak or spill. Either way, though, big incentives are added for the number of "do-it-yourselfers" to increase dramatically. Is this the result EPA hopes to achieve?

NATSO supported your efforts last December, Mr. Chairman, and those of the first witness this morning, Congressman Ike Skelton, to preserve the legitimate recycling system by amending H.R. 2817 to exempt "recycled oil". We now want to urge members of the Joint Conference presently considering the Superfund Reauthorization to adopt Mr. Skelton's compromise language to Section 101(b) as proposed in his letter of April 14, 1986, to Chairman Dingell. See attachment No. 2. In our opinion, this rational approach will achieve appropriate safeguards for the environment, while at the same time ensuring that truck stop operators and other small businesses in the recycling system do not drop out.

NATSO strongly contends, therefore, that the Subcommittee should take this opportunity to challenge EPA on its claim that used oil is already covered under Superfund. The Subcommittee is in the position to set the record straight. The Agency should be told to stop disseminating its inaccurate interpretation of legislative intent which is clearly inconsistent with the actual statutory exclusion for "petroleum and petroleum products" and the Congressional mandate in the 1984 RCRA amendments for EPA to study whether to list used oil at all. Essentially, the EPA is improperly lobbying against the "recycled oil" amendment by this tactic and this must stop.

Another misleading position that has been taken by EPA relates to the effects of the proposed listing on the price of used oil. I want to state clearly that the rapid downturn in the prices recyclers are willing to pay for used oil since EPA announced its proposed listing is no mere market fluctuation. A few truck stop operators are now paying to have their used oil picked up. Many others are being told that there will be "no charge" for now, but to expect to begin paying if used oil is listed as a hazardous waste. The dire predictions made in NATSO's supplemental comments to EPA in April have come true in a month's time.

A few weeks ago my truck stop was charged $10 by the recycler with whom we do business to pick up used oil. When I inquired about the reason, the company specifically mentioned the EPA proposal. Another NATSO member just paid 8.5 cents per gallon to have its recycler pick up about 1100 gallons, and he was informed that it could be 12 cents next time. In December, just as the EPA proposal was made, that truck stop was paid 18 cents per gallon for its used oil. Attachment No. 3 to my statement shows a letter and materials from a third NATSO member which illustrates the general situation today--truck stops are "lucky" if they are not charged for this "service." Used oil is no longer a product with value for the recycler, but it has become a waste requiring transportation and disposal service.

The reason for this sharp change in attitude by recyclers, re-refiners, and transporters is due in large measure to the EPA's proposal. These recyclers are not just reacting to lower crude oil prices, they are anticipating the market that will exist if used oil is treated as a hazardous waste. If some charges are already being extracted today, what will happen when the listing becomes final? The added cost of EPA's regulations, together with the liability risks associated with a hazardous waste, will more than eliminate the slight advantage the recycled used oil has in the market today. Virgin oil will be preferred by businesses currently burning used oil as a cheaper alternative and recyclers will have no customers.

When recyclers have no customers, they will no longer purchase my used oil. At that point my choices are to pay to haul it away, pay to cover my potential risk of liability (if I can even get insurance) and double or triple the cost of an oil change. Of course, I could always give my customer back his used oil (he generated it) and let him worry about where to dispose of it. Or I can simple stop handling used oil altogether and avoid any of these problems. I don't think these are dufficult choices, Mr. Chairman, for me or for my fellow truck stop operators. We just won't handle used oil on a regular basis.

The final area I want to cover today, Mr. Chairman, concerns the proposed management standards. Earlier I mentioned that truck stop operators were prepared to accept reasonable regulations, assuming the recycling system is to continue. Our comments to EPA have highlighted the major problems but I want to call special attention to two of them.

NATSO has the impression that EPA believes its proposed regulations adequately reduce burdens for small quantity generators. The truck stop industry, which has a heavy small business constituency, disagrees with that view and requires revisions in those small quantity generator regulations.

We recommend that the proposed 1,000 kilogram per month threshold for recycled oil should be raised to 2,000 gallons. A survey of NATSO members reveals that truck stop operators have used oil tanks ranging in size from 550 gallons to 2,000 gallons. Efficient collection of used oil at truck stops demands that we be able to work out pick up schedules with recyclers based on tank capacity. Moreover, a single heavy truck oil change averages about 44 quarts of oil and may range from about 28 quarts to a maximum of 60 quarts. Truck stops have proven themselves capable of participating in legitimate recycling and it would be unfair to impose heavier regulatory burdens on them strictly by establishing an unrealistic level to define a small quantity generator.

NATSO also pointed out to EPA that averaging the small quantity generator limit would make sense. This way, a business that exceeded the allowable limit some months would not be automatically disqualified from the benefits of being a small quantity generator if the overall 12 month average still fell below the annual limit. Logic dictates that reasonable regulations take into account the periodic and/or seasonal variations that occur in the real world.

The second major concern NATSO has with the proposed management standards is the requirement for secondary containment for underground used oil storage tanks. Mr Chairman, this expensive regulation is totally premature when the EPA is presently in the middle of an extensive process of coming up with overall underground tank regulations under the 1984 RCRA amendments. Those regulations will include used oil tanks when they are issued. Small businesses should not be forced to spend $10,000 or more for secondary containment on used oil tanks when that decision is not part of the fullscale evaluation mandated under the RCRA tank provisions.

There is also no basis for that requirement. EPA's own Regulatory Impact Analysis showed only 210 leaks during a 70-year period and NATSO's pollution insurance program manager reports no leaks involving used oil tanks in any of its policies during the last four years.

NATSO urges this Subcommittee to review carefully these effects on small businesses who are responsible members of a recycling system, as well as additional adverse impacts described by other witnesses today. I would ask on behalf of the truck stop industry, Mr. Chairman, that you and other members of the Subcommittee send a letter to the Administrator of EPA, Mr. Thomas, strongly voicing your objections to the manner in which the Agency has proceeded to date. I hope that I have identified some of the problems we in the business community will face if any used oil management standards adopted by the Agency fail to reflect operational and practical realities.

CONCLUSION

In summary, NATSO requests that this Subcommittee take the following actions:

1. Support the Skelton compromise language to modify Section 101 (b) of H.R. 2817 by sending a letter to all House Senate Conferees calling attention to the need of small business interests involved to recycling used oil for continuation of the exemption from Superfund liability.
2. Produce a statement setting forth the Subcommittee's view of Congressional intent surrounding recycling of used oil for use with the above letter.
3. Direct EPA to refrain from all further lobbying efforts on H.R. 2817.
4. Communicate to EPA the sense of the Subcommittee on the lack of basis for listing used oil as a RCRA hazardous waste and the need for reasonable management standards that enable small businesses to continue to participate effectively in legitimate used oil recycling programs.

Mr. Chairman, this completes my testimony and we would be pleased to answer any questions that you and other members of the Subcommittee may have.

the
PLANNING
corporation

March 28, 1986

ATTACHMENT #1

Alan Theimann
National Association of
Truck Stop Operators
P.O. Box 1285
Alexandria, VA 22313

Re: Used Oil Regulations

Dear Alan:

I have reviewed EPA's material relating to the possible listing of used oil as a RCRA hazardous waste.

The exact effect that this might have on the availability of insurance is difficult to quantify, but I would offer the following:

Currently, liability on a Pollution policy issued to a Petroleum Marketer is limited to the loss of used oil from an insured's storage tank. During the four years that our Agency has been writing Pollution Liability insurance on Petroleum Marketers we have never experienced a loss relating to used oil. I think that, no matter how used oil is classified, we can continue to cover used oil at the insureds covered locations.

The potential problem involves possible contamination after the oil is taken from the insured's site.

Existing Pollution Liability insurance available to Petroleum Marketers is "site specific", which means that the Marketer is only covered for losses that occur at a listed retail or bulk storage location. (See exclusion (g) of the enclosed policy).

If EPA moves ahead with the classification, Pollution Liability insurance for used oil exposure away from the insured's owned or operated locations will probably be unavailable at any price.

Sincerely,

Max Clay
President

MC/kb

Enclosure

insurance brokers and consultants • 8230 boone b
mass-marketing specialists • associations • trade and professional
NEW ADDRESS - 11347 Sunset Hills Road
Reston, VA 22090
PHONE - Area 703-481-0200
03) 893-3031
telex 824440

PETROLEUM MARKETERS

POLLUTION LIABILITY INSURANCE

INTERNATIONAL SURPLUS LINES INSURANCE COMPANY

THIS IS A CLAIMS MADE POLICY — PLEASE READ CAREFULLY

SPECIMEN

In consideration of the payment of the premium, in reliance upon [illegible] in the declarations made a part hereof, and subject to all terms of this policy, the company [illegible] named insured as follows:

I. POLLUTION LIABILITY COVERAGE

A. The company will pay on behalf [illegible] insured all sums which the **insured** shall become [illegible] obligated to pay as compensatory damages because of **bodily injury** or **property damage** to which this insurance applies, provided that:

(1) such **bodily injury** or **property damage** is caused by a **pollution incident** which commences subsequent to the retroactive date shown in the declarations of this policy; and

(2) the claim for such damages is first made against the **insured** during the policy period and reported to the company during the policy period or within fifteen days after its termination.

A claim shall be deemed to have been made only when suit is brought or written notice of such claim is received by the **insured.**

All claims for damages because of **bodily injury** or **property damage** sustained by any one person or organization as a result of any one **pollution incident** shall be deemed to have been made at the time the first of those claims is made.

The company shall have the right and duty to defend any suit against the insured seeking damages on account of such **bodily injury** or **property damage**, even if any of the allegations of the suit are groundless, false, or fraudulent. The company may make such investigation and settlement of any claim or suit as it deems expedient. The company shall not be obligated to pay any claim or judgment or to defend any suit after the applicable limit of the company's liability has been exhausted by payment of judgments or settlements.

B. The company will reimburse the **insured** for reasonable and necessary **clean-up costs** incurred by the **insured** in the discharge of a legal obligation validly imposed through governmental action which is initiated during the policy period, provided that:

(1) such **clean-up costs** are incurred because of **environmental damage** to which this insurance applies; and

(2) the **environmental damage** is caused by a **pollution incident** which commences subsequent to the retroactive date shown in the declarations of this policy.

The company shall have the right, but not the duty, to participate at its expense in any proceeding seeking to impose legal obligations because of such **environmental damage.**

The company will also reimburse the **insured** for other **clean-up costs** which the **insured** incurs, provided that:

(1) the **clean-up costs** are reasonable and necessary; and

(2) during the policy period, the company grants the **insured** prior written consent to undertake the clean-up. The company will grant its consent when, in its sole discretion, a **pollution incident** which commences subsequent to the retroactive date shown in the declarations of this policy or the threat of a **pollution incident** presents an imminent and substantial danger of **bodily injury, property damage,** or **environmental damage** to which this insurance applies.

EXCLUSIONS

This insurance does not apply:

(a) to **bodily injury, property damage,** or **environmental damage** which is expected or intended from the standpoint of the **insured;**

(b) to liability assumed by the **insured** under any contract or agreement, but this exclusion does not apply to liability that the **insured** would have in the absence of such contract or agreement;

(c) to any obligation for which the **insured** or any carrier as his insurer may be held liable under any workers' compensation, unemployment compensation, or disability benefits law, or under any similar law;

(d) to **bodily injury** to any employee of the **insured** arising out of and in the course of his employment by the **insured** or to any obligation of the **insured** to indemnify another because of damages arising out of such injury;

(e) to **property damage** or **environmental damage** to

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(1) a **waste facility**, or

(2) property owned or occupied by or rented to the **insured**, or

(3) property used by the **insured**, or

(4) property in the care, custody, or control of the **insured** or as to which the **insured** is for any purpose exercising physical control;

(f) to **property damage** or **environmental damage** to premises alienated by the **named insured** arising out of such premises or any part thereof;

(g) to **bodily injury, property damage**, or **environmental damage** included within the **completed operations hazard** or the **products hazard**, and arising out of an emission, discharge, release, or escape which originates away from any **insured site**;

(h) to **bodily injury, property damage**, or **environmental damage** arising out of the ownership or operation of any "offshore facility" as defined in the Outer Continental Shelf Lands Act Amendment of 1978 or the Clean Water Act of 1977 as amended 1978, or any "deepwater port" as defined in the Deepwater Port Act of 1974, as amended or as may be amended;

(i) to **bodily injury, property damage**, or **environmental damage** arising out of a **pollution incident** emanating from an **insured site** or part thereof used by the **named insured** for the storage, disposal, processing, or treatment of waste materials, if such site or part thereof was:

(1) sealed off, closed, abandoned, or allienated prior to the retroactive date shown in the declarations of this policy, or

(2) sealed off or closed subject to statute, ordinance, or governmental regulation or directive requiring maintenance or monitoring during or after such sealing off or closure;

(j) to **bodily injury, property damage**, or **environmental damage** arising out of the ownership, maintenance, operation, use, loading, or unloading of

(1) any aircraft, **automobile**, rolling stock, or watercraft owned or operated by or rented or loaned to any **insured**, or

(2) any other aircraft, **automobile**, rolling stock, or watercraft operated by any person in the course of employment by any **insured**;

(k) to **bodily injury, property damage**, or **environmental damage** arising out of the emission, discharge, release, or escape of drilling fluid, oil, gas, or other fluids from any oil, gas, mineral, water, or geothermal well;

(l) to **bodily injury, property damage**, or **environmental damage** arising out of a **pollution incident** which results from or is directly or indirectly attributable to failure to comply with any applicable statute, regulation, ordinance, directive, or order relating to the protection of the environment and promulgated by any governmental body, provided that failure to comply is a willful or deliberate act or omission of

(1) the **insured**, or

(2) any **named insured**, or any member, partner, or executive officer thereof;

(m) to **bodily injury, property damage**, or **environmental damage** arising out of acid rain;

(n) to **environmental damage** outside the United States of America, its territories or possessions, Puerto Rico, or Canada;

(o) 1. to **bodily injury, property damage**, or **environmental damage**

(a) with respect to which an **insured** under the policy is also an **insured** under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Association of Canada, or would be an **insured** under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) resulting from the **hazardous properties** of **nuclear material** and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;

2. under the Supplementary Payments provision relating to first aid, to expenses incurred with respect to **bodily injury** resulting from the **hazardous properties of nuclear material** and arising out of the operation of a **nuclear facility** by any person or organization;

3. to **bodily injury, property damage**, or **environmental damage** resulting from the **hazardous properties of nuclear material**, if

(a) the **nuclear material** (1) is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured** or (2) has been discharged or dispersed therefrom;

(b) the **nuclear material** is contained in **spent fuel** or **waste** at any time possessed, handled, used, processed, stored, transported, or disposed of by or on behalf of an **insured**; or

(c) the **bodily injury, property damage**, or **environmental damage** arises out of the furnishing by an **insured** of services, materials, parts, or equipment in connection with the planning, construction, maintenance, operation, or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion (c) applies

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ROMANO L. MAZZOLI, KENTUCKY

United States House of Representatives
Committee on Small Business
Subcommittee on Exports and Special Problems
B-363 Rayburn House Office Building
Washington, DC 20515

ANDY IRELAND, FLORIDA
WILLIAM W. COBEY, JR., NORTH CAROLINA
HOWARD COBLE, NORTH CAROLINA
DAVID DREIER, CALIFORNIA

RUSSELL ORBAN
STAFF DIRECTOR-COUNSEL
202-225-8300

STEPHEN P. LYNCH
MINORITY
PROFESSIONAL STAFF MEMBER
202-225-8420

April 14, 1986

ATTACHMENT #2

Honorable John Dingell
2221 Rayburn Office Building
Washington, D.C. 20515

Dear John:

I am writing to urge the members of the Superfund Reauthorization Conference Committee to modify the used oil recycling provision in H.R. 2817 so that it can accomplish its stated objective, namely, the encouragement of environmentally protective methods of recycling. As originally drafted, the used oil recycling amendment created a strong incentive to come into compliance with EPA's management standards for recycled oil. However, during floor debate concerns were expressed regarding provisions for proper clean up should a spill occur. As a result, language was included in the amendment which in addition to requiring compliance with EPA's rules, mandates that the recycled oil be treated in a way that "removes the hazardous constituents" or renders them "harmless". While this is a laudable objective, it is an impossible standard to meet - even if one were dealing with virgin oil.

Compliance with EPA's very stringent management standards which have been designed to protect human health and the environment, should be sufficient. Let me also point out that adequate authority exists under several sections of RCRA, for EPA to respond to releases of used oil that pose threats to human health and the environment (e.g. secs. 7002, 7003, 3008).

While the pressures to recycle waste oil for energy conservation and economic purposes have eased recently, the pressures to dispose of the waste oil safely in our environment is ever-growing. America's used oil recycling system handles approximately 57 percent of the more than one billion gallons of used oil generated each year. The balance of the used oil is disposed of improperly -- into sewers, backyards, or into the trash (which eventually winds up in municipal landfills). The used oil recycling amendment should be revised in order to keep the current system operating as well as encourage a much higher percentage of used oil to be properly and safely handled.

The used oil recycling system in this country depends, in large measure, on volunteers. These include small business owners such as, the service station owners or truck stop operators who perform a community service of collecting used oil from do-it-yourself oil changers. If we impose a stricter standard upon them to avoid superfund liability and (in addition to their already increasing insurance premiums,) what incentive do these truck stop operators and service station owners have to not drop out of the recycling system. Similarly, the asphalt plant owner who normally uses recycled oil as fuel will simply burn virgin oil rather than face the potential for Superfund liability. And as a result, all of us are faced with the problem of disposing of waste oil with no convenient solution. Congress will have made the problem worse.

I urge you to consider modifying the "recycled oil" amendment in H.R. 2817 so that it serves its original purpose -- protection of public health and the environment. Enclosed is my suggestion for language which will accomplish this purpose. If you have any questions, please let me know.

With best regards, I remain

Yours truly,

Ike

IKE SKELTON
Chairman

IS:bp

Enclosure

USED OIL RECYCLING AMENDMENT
TO SUPERFUND REAUTHORIZATION LEGISLATION
Section 101(b) of H.R. 2817

House Passed version

(b) HAZARDOUS SUBSTANCES. - Section 101(a)(14)(C) of CERCLA is amended by inserting after "Congress" the following: "and not including used oil that is listed or identified as a hazardous waste under the Solid Waste Disposal Act if such used oil (i) is treated, managed, or recycled in such a way as to remove or render harmless the hazardous constituents contained in such oil or such used oil does not contain hazardous constituents, and (ii) such used oil is in compliance with a final rule promulgated by the Administrator, which rule shall authorize the Administrator to order any corrective action necessary for any release of used oil".

Senate Passed version

No provision

Suggested House-Senate Compromise

(b) HAZARDOUS SUBSTANCES. - Section 101(a)(14)(C) of CERCLA is amended by inserting after "Congress" the following: "and not including 'recycled oil' as defined and regulated by the final rules promulgated by the Administrator under section 3014 of the Solid Waste Disposal Act",

SNYDER'S GATEWAY, INC.
Route 1 · Box 35
Breezewood, PA 15533

Gateway
restaurant · catering · bakery
gift shop · garage · motel
travel store · service station

Phone (814) 735-4011
TWX #510-691-2810

Open 24 Hours

ATTACHMENT #5

April 11, 1986

Mr. Alan Thieman
General Counsel
N.A.T.S.O.
P.O. Box 1285
Alexandria, VA 22313

Dear Alan:

Enclosed please find copies of recent letter expressing my concern for Senator Packwood's "Reform."

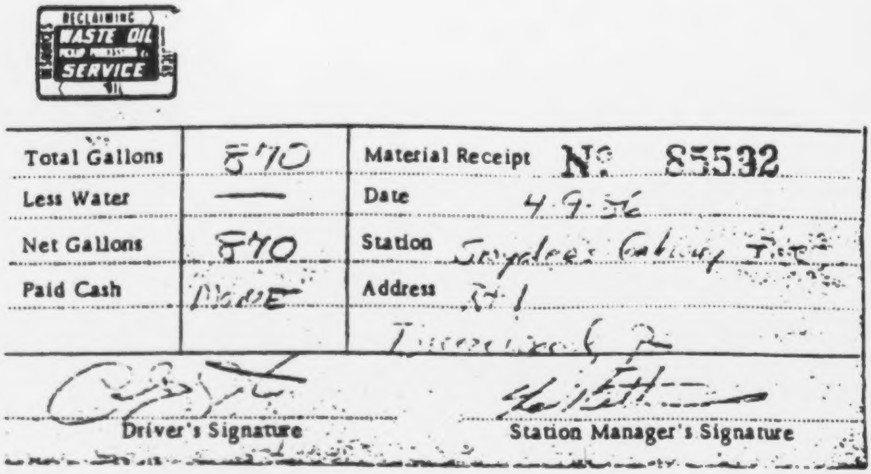
In addition, I have enclosed photo copies of the most recent transaction concerning our regular used oil pick up carrier. Until this pick up we had been receiving a fee for the oil. We were informed that we were one of the lucky group that would not be charged, at least not at this time for this service. The other photo copies of the pick up forms reflect a change in the method of handling.

Sincerely yours,

L Frank Bittner

L. Frank Bittner
President

LFB/ms
enclosures



RECLAIMING WASTE OIL PICKUP PROCESSING SERVICE

Total Gallons	870	Material Receipt	Nº 85532
Less Water	—	Date	4-9-56
Net Gallons	870	Station	[illegible]
Paid Cash	NONE	Address	Rt 1
			[illegible]

Driver's Signature

Station Manager's Signature

OFFICIAL USED OIL RECEIPT

CERTIFICATION OF USED OIL COMPOSITION

I, Snyder's Gateway [illegible] Truck Stop
Name

Position

Marshall or Kay
Company Name

Rt 1 Breezewood PA
Company Address City State

(Area Code) 814 - 735-4611 ext 33
Company Phone Number

HEREBY CERTIFY:

1. That I am a used oil ☒ Generator
   ☐ Collector

2. That the used oil 870 Gallons released 4-9-86 Date
   to Baumgardner Oil Driver CARL Street
   ☒ Has not been mixed with any hazardous material
   ☐ Was generated from metal working oils or other oils containing chlorine produced by ______ Oil Manufacturers Name
   ______ Product Identification Code and Name

Invoice # 85592

3. That this company generates
   ☐ less than 300 gallons per month
   ☒ more than 300 gallons per month

4. That this company ☐ does ☒ does not accept used oil from the public (Household oil from Do-It-Yourself oil changers)

Snyders Gateway Kay Cunkle
Certification Signature

This is a receipt required by law - retain in your records for three (3) years.

Baumgardner Company
1514 Black Gap Road • Fayetteville, PA 17222
717-352-7078 • 1-800-233-0960 • 1-800-641-6100

IMPORTANT - PLEASE RETAIN THIS INFORMATION

As the generator of used oils, which may be classified as hazardous materials by the Federal Environmental Protection Agency, you are responsible for proper approved disposal. Although we cannot assume your total responsibility, we can provide the most professional approved method of disposal of this used oil. All used oil removed by Baumgardner Company will travel in Baumgardner Company trucks and be processed in Baumgardner Company's facility. The reclaimed oil is then sold to approved buyers.

1. Federal Hazardous Materials - Environmental Protection Agency: PAD013944673
2. Pennsylvania Plant Operation - Department of Environmental Resources: PA0080101
3. Water Quality Management Permit: PA0080101
4. Maryland Oil Operations: 81-OP-0208
5. Maryland Oil Transport: 01711
6. Delaware Oil Handlers: OH5
7. Maryland Reclaimed Oil Sellers Permit: 10-18-1106
8. New Jersey Oil Handlers: S8392
9. New York Oil Handlers: PA064
10. South Carolina Oil Handlers: 013944673T
11. Connecticut Oil Permit: CT-HW-314

May I suggest that you retain this information and these permit numbers to present to your Department of Environmental Resources inspector when he questions you about the disposition of your used oil. This company keeps a record of all your pick-ups. We can supply this information to your EPA inspector when required.

FOR YOUR PROTECTION DO NOT RELEASE YOUR USED OIL TO ANYBODY WHO DOES NOT SUPPLY THE PROPER PERMIT NUMBERS TO YOU IN WRITING. THE FACT THAT SOMEONE HAS REMOVED THE OIL FROM YOUR PREMISES DOES NOT RELIEVE YOUR RESPONSIBILITY. IF THE COMPANY THAT REMOVES YOUR USED OIL DISPOSES OF IT IMPROPERLY AND IT IS TRACED TO YOU, YOU WILL BE HELD RESPONSIBLE FOR RELEASING YOUR OIL TO AN UNAPPROVED DISPOSER.

This company accepts only petroleum based used oil. We do not accept hazardous chlorinated chemicals, including polychlorinated biphenyls (PCB) and all other known carcinogenics.

Mr. STENHOLM. Thank you Mr. Bradley.
Mr. Kent.

TESTIMONY OF WILLIAM B. KENT, PRESIDENT, KENT OIL, INC., REPRESENTING PETROLEUM MARKETERS ASSOCIATION OF AMERICA

Mr. KENT. It may take 5 minutes just to say howdy, being from west Texas.

Good morning, Mr. Chairman and members of the subcommittee. My name is Bill Kent, President of Kent Oil, Inc., and I am appearing before the subcommittee today as a member of the management committee, Petroleum Marketers Association of America [PMAA].

PMAA, formerly the National Oil Jobbers Council, is a federation of 41 State and regional trade associations representing approximately 11,000 small independent petroleum marketers. See attachment A. Collectively, these marketers sell half the gasoline and over three-quarters of the home heating oil consumed in America today.

While virtually all of these marketers are small businessmen, if one combined their collective assets, they would rank 17th on the Fortune 500's list of companies.

I am attaching a copy of a statistical fact sheet on PMAA which should assist you in understanding the scope of independent petroleum marketing. See attachment B.

Mr. Chairman, first let me say that PMAA very much appreciates your active interest in the used oil issue, and we especially commend you for scheduling this hearing today. It is particularly appropriate during Small Business Week that the main focus of this hearing is a pending rulemaking by a Federal agency which could very well have severe adverse impact on a substantial number of American small businesses.

In fact, as I will relate in my testimony, just the proposed rules of the U.S. Environmental Protection Agency are already having a severe adverse impact.

Your letter of invitation, Mr. Chairman, asked that we provide testimony relating to the perceptions members of our industry have regarding EPA's proposed regulations for used oil. While appearing here today on behalf of PMAA, I thought it would be most useful to the subcommittee for me to relate specifically the nature of my business and how the proposed EPA regulations would affect that business. I will also touch on the current Congressional consideration of the issue in connection with Superfund.

Kent Oil, Inc., of Midland, TX, is a small independent petroleum marketing company primarily in the business of selling gasoline. We also have an oil change business we started in 1977 that has grown tremendously, and now represents approximately 5 percent of the total revenue of our company. We service a population area of about 250,000 in west Texas. Our oil change business is treated as a separate entity. I think it is declining with the oil price, but it is still somewhere in that neighborhood.

It has about $500,000 in assets—we have six quick oil change units—$1 million in annual revenue, and about 20 employees. Thus, we are clearly in the small business category.

We do approximately 50,000 oil changes per year, the majority of which are repeat customers coming two to three times during the year. Our company has roughly 1 to 2 percent of the oil change market in our area, with this amount growing each year by converting do-it-yourselfers to our service.

In 1977, our first year, we did less than 9,000 oil changes. Other service stations, auto dealers, tire stores and do-it-yourselfers make up the remainder of the oil change market.

By far, the largest percentage of oil changes in our area are done by the do-it-yourselfers who change their oil in their yards, their garages, alleys, et cetera. Over 50 percent of the people in our area change their own oil.

Some operators in our business accept do-it-yourselfers' oil in their centers; however, we do not, to insure the integrity of the product we sell to the recyclers.

The used oil we generate from our oil change operations is sold to one or more oil recyclers who pick it up, recycle it and sell it to industrial users. This natural recycling process has worked well in the past. I have been paid as much as 40 cents per gallon for this used oil.

However, in our area, recyclers of used oil are now charging up to 10 cents per gallon to pick up used oil. In comparison, this time last year we were being paid between 25 to 30 cents per gallon for our used oil.

The reason our purchaser of used oil is now charging us is directly linked to the EPA listing of used oil. We have been told that recyclers are not buying used oil in our area, and that the market is drying up because of the hazardous waste concern and the costs of regulation.

Obviously, when we go from receiving payment for used oil to having to pay to haul it away, it affects our cost of doing business. At some point, this cost will have to be passed on to the consumer, raising our prices and potentially causing customers to become do-it-yourselfers.

Recently, we hired a market research firm to gather information about our customer base and potential customers in our area. One of the things we found in this research was that a very high percentage of people in our area are do-it-yourselfers.

It appears over 50 percent of our market area are of this nature. The price of an oil change also appeared to be the major reason for these do-it-yourselfers to not use our service or that of others, service stations, dealerships, et cetera.

With that in mind, additional costs of doing business such as paying to have used oil hauled away, additional insurance costs, or lack of insurance, and Federal/State regulations and management standards will no doubt compound the problem. These things cost money, and cost cannot be absorbed by us.

We will pass these additional costs on to consumers in the form of price increases. Price increases will cause more people to do it themselves and more do-it-yourselfers will pour oil in sewers, alleys, drains, et cetera.

As I mentioned previously, we currently do not accept used oil from do-it-yourselfers for fear of what might be in the product. Product integrity has been important to us, and it has allowed us to receive higher payments in the past for our used oil.

Under EPA's proposal, under no circumstances will we ever accept do-it-yourselfers' oil. My question is, "What will happen to this oil when our competitors stop accepting used oil due these regulations?"

I am very concerned that EPA's listing of used oil will continue to cause problems in an industry that was functioning well before this proposal. This proposed listing will continue to increase the cost of doing business.

In addition to the potential recycling problem and the inability to dispose of used oil economically, there is the tremendous concern over insurance. I know this subcommittee is well aware of the insurance issue as a result of your Virginia field hearing last November, at which PMAA testified.

I am finding it increasingly difficult to find insurance; and with used oil deemed a hazardous waste and coming under the jurisdiction of Superfund, I believe it will become impossible to obtain insurance. Frankly, without insurance, I will get out of the business. I cannot and will not subject myself to Superfund liability without adequate, affordable insurance.

Even if insurance remained available, my premiums no doubt would skyrocket, and I would have to charge more for an oil change. Presently, we charge $18.95. If the price of an oil change increased to $50 or $60 or even more, which is not unrealistic in view of the liability we would be facing, then the number of do-it-yourselfers would rise precipitously. Even if the price goes up only $5 to $10, the number of do-it-yourselfers would increase substantially.

It appears I am headed for a catch-22. The hazardous waste designation for used oil will cause the recycling industry tremendous problems and will, no doubt, dry up what is today an efficient, well-working system to dispose of used oil.

The recyclers would no longer have the incentive to handle and reclaim this product. It would become too expensive to touch. If the recyclers refused to handle this product due to the liability, then I would be left holding the bag.

At the same time, the potential loss of insurance, or the extremely expensive premiums if insurance is even available, make it very difficult to stay in business even if we could find recyclers to purchase our products.

If I can get insurance and have no recyclers, what do I do? Should I ship 5,000 gallons of hazardous waste 600 miles to the closest approved site? What does this do to the cost of an oil change? We tried last week to answer a couple of these questions.

We contacted the State of Texas to ask them if they were aware of any approved hazardous waste sites in the State that would accept used oil, and they were not aware of any. We are not aware of any.

We also tried to contact our two used oil buyers, or collectors, they are not buyers anymore, collectors, and one who has been the largest has not returned our phone call for several weeks, and the other who has been in the business for 30 years, told us he is going out of business next week. He laid off all his people. He can't find recyclers that will buy it.

Due to the fact he has not made money for the past 6 months, he is getting out of the business. We are currently sitting with a situation where we don't know what to do with our used oil.

I have to believe EPA does not want to see our industry paralyzed by costly regulations or see an increase in do-it-yourselfers. We handle used oil responsibly, and I believe that the vast majority of do-it-yourselfers do not.

Our system has worked well in the past, yet we are now seeing problems arise even though EPA has not issued a final ruling. I hate to think what would happen if these proposals are not changed or eliminated altogether.

Based on the current trends of our insurers, our used oil disposal costs, and the costs of regulations, it is conceivable that EPA's attempt to control used oil will do just the opposite. It would cause responsible companies like ours to get out of the business. What happens to used oil then?

Let the marketplace deal with this problem, not EPA or Federal and State regulators. The quick oil change industry has been a rapidly expanding, valuable service to the consumer and the public at large.

The system works, and I hope EPA and our States do not choke the growth and efficiency out of this needed and valuable industry. The choking has already begun; I hope it can be stopped.

PMAA has commented on EPA's proposed regulations in testimony delivered at an EPA hearing on January 16, and in letters to EPA on February 10 and April 9. Copies of these statements have been submitted to the subcommittee for your reference.

Our conclusion in our statements to EPA was that the proposed listing of used oil as a hazardous waste should be withdrawn altogether. In the alternative, PMAA recommended that EPA consider listing used oil only when it is disposed of, or when it exceeds a threshold level of certain constituents which EPA has determined pose a significant risk to human health and the environment.

Finally, Mr. Chairman, PMAA has recommended that the Congress enact a modified version of the House-passed used oil provisions in connection with the pending Superfund legislation. Essentially, PMAA recommends that the detailed language in the House bill is not necessary, but that it would be sufficient to simply specify that recycled oil is to be subject to the final rules promulgated by EPA.

Used oil properly recycled in compliance with EPA's final rules should be excluded from Superfund coverage. Our concerns as well as the specific proposed legislation language were included in a March 25 letter to Superfund conferees, included as attachment C.

Again, Mr. Chairman, we deeply appreciate your active interest in the used oil issue, and we look forward to continuing to work with you. I would be pleased to respond to any questions the subcommittee may have.

Thank you, Mr. Chairman.

[Attachments to testimony follow:]

ATTACHMENT A

MEMBERS OF THE PETROLEUM MARKETERS ASSOCIATION OF AMERICA

The Petroleum Marketers Association of America represents the independent petroleum marketers who are members of these state and regional trade associations:

- Alabama Oilmen's Association
- Arizona Petroleum Marketers Association
- Arkansas Oil Marketers Association, Inc.
- California Independent Oil Marketers Association
- Colorado Petroleum Marketers Association
- Independent Connecticut Petroleum Association
- Florida Petroleum Marketers Association
- Georgia Oilmen's Association
- Idaho Oil Marketers Association
- Illinois Petroleum Marketers Association
- Indiana Oil Marketers Association, Inc.
- Petroleum Marketers of Iowa
- Kansas Oil Marketers Association
- Kentucky Petroleum Marketers Association
- Louisiana Oil Marketers Association
- Michigan Petroleum Association
- Mid-Atlantic Petroleum Distributors Association, Inc.
- Mississippi Petroleum Marketers Association
- Missouri Oil Jobbers Association
- Montana Chapter, Western Petroleum Marketers Association
- Nebraska Petroleum Marketers, Inc.
- Independent Oilmen's Association of New England
- Fuel Merchants Association of New Jersey
- New Mexico Petroleum Marketers Association
- Empire State Petroleum Association
- North Carolina Petroleum Marketers Association
- Northwest Petroleum Association
- Ohio Petroleum Marketers Association
- Oklahoma Oil Marketers Association
- Oregon Petroleum Marketers Association
- Pennsylvania Petroleum Association, Inc.
- South Carolina Oil Jobbers Association
- South Dakota Petroleum Marketers Association
- Tennessee Oil Marketers Association
- Texas Oil Marketers Association
- Virginia Petroleum Jobbers Association
- Washington Petroleum Marketers Association
- Western Petroleum Marketers Association
- West Virginia Petroleum Marketers Association
- Oil Jobbers of Wisconsin, Inc.
- Wyoming Petroleum Marketers Association

The Petroleum Marketers Association of America is located at 1120 Vermont Avenue, N.W., Suite 1130, Washington, D.C. 20005. Telephone (202) 331-1198.

ATTACHMENT B

PMAA PETROLEUM MARKETERS ASSOCIATION OF AMERICA

STATISTICAL QUICK REFERENCE SHEET
1984 DATA

NUMBER OF MARKETERS REPRESENTED	10,568
TOTAL VOLUME OF REFINED PRODUCTS SOLD	82 BILLION GALLONS
EMPLOYMENT	239,672
FULL TIME EMPLOYMENT	177,416
PART TIME EMPLOYMENT	62,256
PERCENT OF U.S. TOTAL REFINED PRODUCTS	34.4%
MOTOR GASOLINE	50.0%
Diesel Fuel	59.1%
NO. 2 FUEL OIL	75.5%

NUMBER OF MARKETERS BY PRODUCT	NUMBER	% OF TOTAL
HEATING FUELS ONLY	1,078	10.2%
MOTOR FUELS ONLY	3,942	37.3%
BOTH HEATING & MOTOR FUELS	5,548	52.5%
TOTAL	10,568	100.0%

COMBINED ASSET SIZE OF MARKETERS	$15.1 BILLION
TOTAL MOTOR FUELS RETAIL FACILITIES SUPPLIED	99,967
TOTAL MOTOR FUELS RETAIL FACILITIES OWNED	46,046
TOTAL NUMBER OF CONVENIENCE STORES OWNED	14,235

HEATING FUELS DISTRIBUTION CHANNELS	% OF PRODUCT
RESIDENTIAL	63%
COMMERCIAL	18%
OTHER FUEL OIL MARKETERS	5%
INDUSTRIAL	8%
OTHER	6%

MOTOR FUELS DISTRIBUTION CHANNELS	% OF PRODUCT
DIRECT OWNED & OPERATED	30%
LESSEE DEALER	14%
OPEN DEALER	21%
BULK END USERS	30%
OTHERS	5%

BULK STORAGE CAPACITY	1.7 BILLION GALLONS
NUMBER OF BULK STORAGE FACILITIES	10,567

Source: Petroleum Marketers Association of America.

Letter was sent to conferees on used oil recycling amendment

PMAA
PETROLEUM MARKETERS ASSOCIATION OF AMERICA
1130 VERMONT AVE., NW • SUITE 1130 • WASHINGTON, DC 20005 • (202) 331-1196

ATTACHMENT C

March 25, 1986

The Honorable Glenn M. Anderson
House of Representatives
Washington, DC 20515

Dear Mr. Anderson:

On behalf of the Petroleum Marketers Association of America (PMAA), I would like to express our strong support for the inclusion of language in the Superfund reauthorization legislation now being considered by House and Senate conferees which exempts recycled used oil from jurisdiction under Superfund.

The Petroleum Marketers Association of America (PMAA) is the national organization representing the nation's independent petroleum product marketers. Through 41 state and regional trade associations PMAA represents some 11,000 marketers throughout the United States. Collectively, these marketers account for nearly 50 percent of the gasoline and 75 percent of the home heating oil sold in the United States. They sell their product under either their own private brand or the trademark of their supplier.

Specifically, we support the inclusion of language similar to that included in the House-passed bill (there was no language on this issue in the Senate-passed bill). However, we do not believe that it is necessary to include the detailed language that was included in the House bill. Rather, we believe that simply specifying that recycled oil is to be subject to the final rules promulgated by the Environmental Protection Agency would be sufficient. The specific language that we suggest is as follows:

> (b) HAZARDOUS SUBSTANCES. - Section 101(a)(14)(C) of CERCLA is amended by inserting after "Congress" the following: "and not including 'recycled oil' as defined and regulated by the final rules promulgated by the Administrator under section 3014 of the Solid Waste Disposal Act".

This approach would comport with EPA's current rulemaking efforts in that the "final rules" referred to in our suggested language are already well underway. The suggested language would exclude from Superfund coverage only used oil that is properly recycled in compliance with EPA's final rules. This would create an extremely powerful incentive for used oil to be properly recycled.

We strongly believe that the inclusion of used oil under Superfund would have a significant adverse effect upon the recycling process in general, and the ability of small business petroleum marketers to obtain insurance for and thus maintain the used oil services they perform for the public, in particular. The approach we are suggesting is far more likely to result in fulfilling the Congressional intent of encouraging the management of used oil in an environmentally acceptable manner.

Thank you for your consideration, and I look forward to being of any further assistance we can.

Sincerely,

Phillip R. Chisholm

Phillip R. Chisholm
Executive Vice President

PRC:ld

Mr. STENHOLM. Next, we will hear from Mr. Jimmy Payton, chairman, government relations committee, National Automobile Dealers Association.

TESTIMONY OF JIMMY PAYTON, OWNER, PAYTON-WRIGHT FORD-SUBARU, INC., AND CHAIRMAN, NATIONAL AUTOMOBILE DEALERS ASSOCIATION [NADA]

Mr. PAYTON. Good morning, Mr. Chairman, and members of the committee, my name is Jimmy Payton, the owner of Payton-Wright Ford-Subaru, Inc., of Grapevine, TX.

I am also chairman of the government relations committee of the National Automobile Dealers Association [NADA]. NADA is a trade association representing over 19,700 franchised new car and truck dealers across the country.

NADA members are primarily engaged in the retail sale of new and used motor vehicles, both foreign and domestically produced. NADA members, such as myself, are also engaged in automotive service, repair, and parts sales.

Thank you for allowing me to present testimony on the issue of used oil. I speak to you today as a franchised automobile dealer and on behalf of the Nation's dealer body as a whole.

Virtually all automobile dealerships manage used oils. Automobile dealerships with service operations are recognized by EPA to be, enterprise for enterprise, among the largest, by volume, nonindustrial generators of used oil.

Dealership used oils result from the replacement of engine and gear lubricants and from various hydraulic fluids found in cars and trucks. The typical dealer accumulates used oil in underground tanks, in above-ground tanks and/or in containers until pickup by a collector for transportation to a recycling facility or until recycled at the dealership.

NADA is fully supportive of Congress' decision, as reflected in the 1984 amendments to the Resource Conservation and Recovery Act, to address used oil management practices which threaten human health and the environment.

In addition, NADA is fully supportive of EPA's stated intention to promulgate standards governing the generation and transportation of used oil which is recycled, in order to assure protection of human health and the environment.

At the same time, NADA fully recognizes EPA's mandate to consider the impact of used oil management standards on environmentally acceptable types of used oil recycling, on small quantity generators and on generators which are small businesses.

EPA has proposed to list used oil as a hazardous waste. At present, the vast majority of used oil managed by franchised dealerships is neither a hazardous waste for purposes of RCRA nor a hazardous substance for purposes of CERCLA.

The listing of used oil as a hazardous waste is neither legally required nor necessary for protection of human health and the environment. Listing automotive used oils as hazardous waste could have both severe ramifications for used oil generators and negative impacts on human health and the environment.

Once used oil is listed as a hazardous waste, dealerships will arguably become subject to Superfund liability with regard to the used oil they manage. The insurance necessary to protect against this new exposure will be cost-prohibitive, or worse, unavailable.

Dealerships now getting paid for their used oil will begin to pay for its collection. The cost of automotive service requiring an oil change will skyrocket. The rate of discretionary oil changes done by dealers will decline sharply. As a consequence, do-it-yourselfers will manage, or mismanage, their own used oil at an increasing rate.

Everything I have said has already been said before today.

Recently, some months ago, paint thinner, which we use in our body shops, came under the heading of hazardous waste, and so we began to be controlled there and to have it picked up.

A friend of mine in Amarillo, TX, 300 miles from any large metropolitan area, on his pickup of less than 300 gallons of paint thinner, was charged $1,800 or more. If you thought 40 cents to pick up used oil was high, my math tells me that is $6 a gallon to pick up paint thinner.

If we have to start paying $5 or $6 to have used oil picked up, I can tell you what the automobile dealers in the United States will do, they are going to get out of the automobile business.

Another example—you probably have all gone into an automobile dealership and had a car repaired, and may have had the parts returned in a plastic bag. How would you like to have your oil returned to you in a plastic bag?

This thing could get turned around. Instead of the people bringing the oil to the dealership to have it disposed of, we might be returning oil to the customer, and letting him dispose of that other 50 percent.

Should EPA act in an overly broad fashion to designate recycled oil as a hazardous waste, it may defeat Congress' stated concern for the used oil recycling system. EPA has and should continue to exercise its ample authority to address and correct those used oil abuses which pose substantial threats to human health and the environment.

To date, EPA has put into place strong regulations controlling the burning of used oil in nonindustrial boilers and burners found in, for example, apartment houses and hospitals.

In addition, through the so-called mixture rule, EPA controls the improper handling of used oil that has been grossly adulterated with hazardous waste. NADA supports further controls on used oils improperly disposed of and a prohibition against used oil road dust control.

NADA has consistently urged EPA to consider listing only used oil which is disposed of improperly and/or which is intentionally adulterated. By doing so, EPA would fully address their primarily congressional mandate to ensure protection of human health and the environment and at the same time act to encourage used oil to flow into and not out of the newly regulated recycled oil system.

NADA has pointed out to EPA those proposed recycled oil management standards which would be unduly burdensome to the small quantity used oil generator and/or the small business automobile dealer and/or which would have an inappropriate impact on environmentally acceptable types of used oil recycling.

We are confident that suggestions for fine tuning the proposed recycling regulations will receive just consideration by EPA. In addition, NADA has specifically responded to EPA's stated concerns regarding liability insurance, existing non-Superfund legal liabilities, the burning of used oil, State laws and programs, et cetera.

In summary, it is NADA's position that an overbroad listing rule may act to threaten the very existence of a proper used oil recycling system and would, at the very least, act to increase do-it-yourselfer disposal.

Language in the Superfund reauthorization bill would help to ameliorate the effect of this overregulation. NADA strongly supports a decision on the part of Congress to maintain applicability of the petroleum exclusion to used oil.

NADA urges both Congress and EPA to consider that protection of human health and the environment and encouragement of proper used oil recycling are logically consistent objectives.

Thank you.

Mr. **STENHOLM**. Next, Mr. Robert Rusk, owner/operator, Chevy Chase Exxon, Chevy Chase, MD.

TESTIMONY OF ROBERT V. RUSK, OWNER/OPERATOR, CHEVY CHASE EXXON, CHEVY CHASE, MD

Mr. **RUSK**. I brought a prop with me [a Maryland used oil collection facilities sign]. My name is Robert V. Rusk, and my nickname is Pete, and I speak for myself and my business, Chevy Chase Exxon.

I have spent nearly $1,000 and untold hours researching and commenting on EPA's proposed used oil regulations because they would be another nail in the coffin of full-service gasoline retailing businesses, including mine.

I have submitted comments to EPA and provided background to this subcommittee's staff. I will concentrate on automotive trades because that is what I do for a living.

My crystal ball says that EPA's final regulations will list uncontaminated used oil as a hazardous waste when destined for disposal and impose stringent management standards on used oil collection, transport, and recycling. Indeed, EPA has no choice given the tools at their disposal, and that used oil is, after all, fairly noxious stuff.

So far, so good. Except that by the time these regulations go into effect, the extant burner rules and marketplace factors will have eliminated the recycling option, thus making virtually all used oil hazardous waste. At that point, you gentlemen from Texas and the gentlelady from the State of Louisiana, you will have to go to Mexico for an oil change or do it yourself.

I will be contractually prohibited from accepting household waste oil for recycling. The public, the environment, and thousands of small businesses will suffer. The result will be public outcry that will embarrass Congress and EPA when each is obliged to undo what it has so laboriously done, and begin anew.

The root of the problem is that Congress has given EPA a sledgehammer to drive thumbtacks with. It won't work. Most general auto repair shops will discontinue oil changes to slide under the small quantity generator limit and avoid regulation.

This subcommittee, thankfully, has asked for remarks on alternative regulatory directions in lieu of what EPA has proposed so far. But EPA can't change its spots without legislated tools appropriate to the work at hand.

My proposal is creation of a new category of regulated waste that EPA could, if it chose to, put used oil and similar wastes into. As I run down a bare-bones outline of what regulated wastes should be, keep in mind that used oil is not the only candidate for inclusion in this category. Also please compare and contrast each item with current hazardous waste rules, and EPA's proposed regulations.

Let's look at what characteristics a regulated waste might have.

One, it would pose an important health threat not in small isolated quantities, but because of its total quantity and wide distribution.

Two, it would create more rather than less pollution if it were listed as hazardous.

Three, it would be treatable or recyclable within a simple management system at a cost less than disposal as hazardous waste.

Four, it would be commonly produced by householders or small business in important cumulative quantities that would individually escape into the environment.

Classification as such a regulated waste should invoke rules that include the following:

One, the burden of proof of contamination of regulated waste with hazardous waste should be on the prosecution, not the defendant.

Two, householder and sub-small-quantity-generator generator contributions would not count toward collector quantity brackets, if any.

Three, there should be no regulated waste minimization requirement because in some cases, waste maximization would be optimal.

Four, there should be no downward mixture rule for small escapes from the management system; only for generator quantities which would invoke special regulated waste cleanup rules.

Five, liability for escaped regulated waste would be proportional, applied only to specific pollution liability insurance coverage, and—I should say this in capital letters—limited by personal and corporate bankruptcy.

Six, end products of regulated waste reclamation from which dangerous constituents have been removed would require no warning label.

Seven, provision should be made to provide positive incentive for proper handling of regulated waste. Government could institute a prepaid user fee on new goods that are destined to become regulated waste to create a trust fund that pays a bounty to regulated waste handlers something akin to the deposit on returnable bottles; or each business location that sells products destined to become regulated waste could be required to maintain collection facilities and accept householder and sub-small-quantity-generator generator contributions.

I am sorry, I found no better way to phrase that one.

Eight, a procedure for moving currently listed hazardous wastes into the regulated waste category where appropriate would be available as an alternative to current delisting procedures. And delisting from the regulated waste category should likewise be available when warranted.

If, and only if, steps such as those outlined above are taken will those of us who have been in the vanguard of used oil recycling be able to become conservation and environmental good guys again. The famous TV commercial's advice about oil changes is as valid for Government as it is for motorists: "You can pay me now, or you can pay me later."

I would like to add one other thing here, a couple of things have come to my attention recently. The new phenomenon of foundling oil, if I don't collect it—I have resigned from Maryland's used oil collection program—because of the costs, I get it anyway because I find it on my doorstep when I open up.

NAPA, a major parts house, has now come out with a superneat oil change kit. You open up the top, drop the oil in, close the top, throw it in the—where? The dumpster. At that point, there is no hope of recycling that oil, and it is going to end up in the landfill.

I would also like to thank you, besides, for the chance to comment here, for the chance to catch some EPA bodies here that I can give this sign to, to hold for me until such time as I may need it again. [Hands sign to Mr. John Lehman of EPA.]

Thank you.

Mr. STENHOLM. I think that was a first at a hearing I have ever presided over, or been present at, Mr. Rusk. I appreciate the spirit in which you do it, and I think it was accepted in the same spirit.

Mrs. Long.

Mrs. LONG. Well, I certainly thank all of you very much for your very comprehensive testimony, and I sympathize with you, with all your problems, and certainly as individuals, we don't want to have to go to Mexico or want bags of used oil to take home. Therefore, we must address this problem the best way we can.

We will take your suggestions very seriously when we are making recommendations in our report. I wonder if most of you feel that the Skelton amendment goes far enough in addressing the technical, economic and environmental problems associated with this?

If not, what should we do to increase the coverage for this very volatile issue?

Mr. RASHEED. Mrs. Long, I brought learned counsel along to answer just that question.

Mr. DASKAL. The problem with the House-passed amendment to Superfund is that in order to exclude recycled oil from the definition of hazardous waste, the amendment states that all hazardous constituents must be removed. Even virgin oil has some hazardous constituents to it. You just can't get it cheap enough—there is always going to be some hazardous constituents in it, but just because there are some of those does not mean that the petroleum exclusion does not apply.

The amendment we support would simply drop the language referring to removal of all the hazardous constituents and state that if the oil is recycled pursuant to EPA's management standards, some of which are in place and the others proposed, you could alleviate a lot of damage that would be caused by the listing.

However, we would state strongly that even if the amendment were passed, we would still strongly oppose the listing of used oil as a hazardous waste. We think EPA has fallen far short of its burden to prove that used oil in and of itself is a hazardous waste.

Mrs. **LONG**. Do you think that the do-it-yourselfers are aware of the dangers they are creating for the environment? I don't think the end-users really have any way to know this information. They are scattered all over the country, many in rural areas. I don't think there are warning labels on oil cans bought in the supermarkets, are there?

Mr. **RUSK**. There are under the act authored by Congresswoman Mikulski. There is a requirement that states that all new motor oils are not legal for sale unless appropriately labeled—if I can quote from memory, "Don't pollute, conserve resources, return used oil to collection center."

There is awareness. The fact that people do attempt to return oil to recycling centers, the fact that it is on the label and the foundling oil phenomenon shows that there is public concern.

There are people when I said to them, "I have dropped out of Maryland's recycling facilities out of economic and liability considerations," they say, "Look, Pete, there is nothing here but used oil, no lawn mower fuel, no paint thinner, no dioxins, no pesticides, no nothing. I will give you a dollar to take it."

There is awareness—not to say that it is enough, but there is and I think it is important that we not kill it.

Mrs. **LONG**. Mr. Rasheed.

Mr. **RASHEED**. I would like to state that in our meetings with the EPA office of the ombudsman, we suggested that all cans of new oil should be labeled appropriately, that this should be treated in a certain manner. It should be treated under certain circumstances, and that it shouldn't be dumped so that I think that the labeling of oil cans is a very important future development that might be considered, but I think EPA's study has shown that there is about a 57-percent awareness, that used oil indeed could be a hazardous substance and should be handled accordingly.

I think that most people are indeed aware that they should not dump used oil, but unfortunately, so many people think that once they have put that used oil in a Clorox bottle and put it in the dumpster, as indeed several Congressmen have confessed to me they do, they think they have done their environmental duty. They don't realize it is going into the landfill and will be crushed and eventually the used oil will find its way into the ground water.

When you are talking about 350 million gallons, you are not talking about a drop in the bucket.

Also, it takes very little used oil to contaminate an awful lot of ground water. So I think the awareness problem, it may be that awareness is growing, but I think—for example, Maryland did something. The Used Oil Program that Mr. Willey spoke of is something I participated in many years ago in Maryland.

I think Congressman Hoyer was president of the Maryland Senate at that time. A bill was passed that carried with it a $200 penalty for an unlawful dumping of used oil except in a proper collection facility. It was never intended that people would be prosecuted, but it was intended that it would carry a penalty so they would understand that this was a serious matter.

Also, people that sold used oil, discount stores in particular, were required to put up a sign saying that this was a hazardous substance and that it should be dumped in the nearest collection center and the address had to be given on the sign.

Mr. DASKAL. With regard to what Mr. Rasheed mentioned, we could submit a copy for the record and indicate there are variations in the level of awareness of the hazardous used oil. I think people in the South tend to be more aware of the problem than the Yankees tend to be.

Mrs. LONG. Are they sufficiently aware of where to take the used oil?

Mr. DASKAL. That would depend on what sort of program the States tend to have. It tends to be better in a State such as Maryland which at one time had an aggressive program.

Massachusetts has a requirement that the discount houses selling the majority of the used oil provide collection facilities for it, but the Massachusetts requirement is openly flouted. We think public labeling is probably the best way to get the point home to the do-it-yourselfers.

Mrs. LONG. Thank you, Mr. Chairman.

Mr. STENHOLM. Mr. Combest.

Mr. COMBEST. I have always felt like those of us from Texas that operate on the 5-minute rule don't have the opportunity because of the speed at which we think—I mean the speed at which we talk. There are those who would as well argue that we think at the same speed, but that will be debated some time later.

It seems a little ironic in a way, I suppose, that—we talked a great deal this morning about the do-it-yourselfer, and it seems from what I am continuing to hear that there is a feeling that may be part of the problem, the reason that this is coming under such scrutiny, may have been the do-it-yourselfer, particularly as you indicated, protecting the integrity of your oil from your changing. That may have been where a lot of the problem originated.

Is there a standard or regular test? We have the gentlemen from Maryland here and from Missouri and from Texas—is there a standard test on a regular basis whenever someone comes and picks up your oil that they do to determine what else might be in it, other than used oil?

Mr. RUSK. There are a couple of tests. Generally they are done only on truckload lots as they arrive back at the collector's plant.

Mr. COMBEST. But that truckload may not have all come from your service station; is that correct?

Mr. RUSK. Precisely. The first test they usually run as I understand it is a flash point test to determine if it is ignitable waste. There are also tests for halogens and heavy metals which they make. None of these tests can readily be done at my site.

I have watched a number of closed-cup method flash point tests and it takes a while and it takes a chemist, which, I am not. It takes equipment which I don't have and which I might not be able to drive anyway.

A halogen test and heavy metals test would require something like $50,000 worth of sophisticated equipment.

Mr. **Combest**. I am not really trying to get to the point of whether or not you could run the test yourself, but basically if you could distinguish between that—it obviously is worth something to you to keep that separate.

Mr. **Kent**. I think in our case we generate enough used oil that when they collect it, there is no other used oil mixed with us. Consequently, when the collector goes to the recycler and I think they do a check—it comes strictly out of our locations and we don't mix it with anyone else's. We get an immediate check for that.

It has benefited us because we got more money for the used oil on that basis because we don't know what the people bring us when we get used oil.

Mr. **Daskal**. With regard to where used oil is contaminated, in the Federal Register notice, EPA explicitly noted that used oil coming from the generators is not contaminated. If used oil is going to be contaminated, it is going to be done upstream now with regard to the special problems brought in by the do-it-yourselfers.

We have a serious problem in the management standards in this regard. In the proposed management standards, if your used oil becomes contaminated, the entire mixture becomes RCRA subtitle (c) hazardous waste and counts toward your small quantity generator accumulation limits.

In other words, if I am a service station and I accumulate between 100 and 1,000 kilograms per month of hazardous waste, then I have some relatively easier management standards to deal with. But if the used oil mixture is counted in, then a typical service station is going to be kicked up into the large quantity generator category which is an entirely different animal with regard to regulation.

So even if we deal with the listing problem, a significant impediment for us to continue to accept do-it-yourselfer oil is we don't know what is in there and if the do-it-yourselfer mixes paint thinner and so forth, our entire mixture will become RCRA subtitle (c) hazardous waste and it will make us large quantity hazardous waste generators.

It is a big problem that we haven't come up with a solution on and I don't think the Agency has focused on that.

Mr. **Combest**. It is going to have a tremendous impact on the small business operation—if you are brought under hazardous waste, it is going to put you out of business.

Mr. **Kent**. Absolutely.

Mr. **Combest**. Besides the point, it would be nice if there could be a collection agency for do-it-yourselfers, the problems with your being able to handle that is going to be very significant. I don't want us to overlook that fact in this whole discussion.

Mr. **Kent**. Originally, our decision not to handle do-it-yourselfers was an economic decision. It is now based on fear of what that is going to do to us.

Mr. **Thiemann**. I think there is another trend that may be coming into play. The recycler or transporter is moving through a route and picking up various amounts of used oil, and they may be able to take a sample of that oil that is being collected from various locations. When they get back, if they find that on a truckload that they have tested that there is a problem, they can go back to those individual samples.

What is happening is a contractual arrangement with the various collection sites that if the load has been contaminated and it turns out that it is your used oil, then you must pay for the disposal of that load. So there are other problems that come to haunt you later on, even if you think you have handled everything correctly up to that point.

So it is a contractual problem that you might want to address to the recyclers, since they are in a position to do the testing. But it may be that the disposal cost will still be borne by the generator or the perceived generator.

Mr. STENHOLM. Mr. Rusk, would you like to have your sign back?

Mr. RUSK. Only if I get to use it when I get it back. Only if I can, without significant risk or cost to myself, freely accept used oil for recycling. I am a sole proprietor—that is about as small a business as you can get. I can't put my daughter's next payment to her orthodontist up for grabs because someone puts some lawnmower gasoline in used oil and drops the flash point. I can't see it.

You know, I am a nice guy, but I am not that nice, and I am really not suicidal, either.

Mr. STENHOLM. In other words, you believe that you do have a role to play in this particular part of our environmental program?

Mr. RUSK. Absolutely.

Mr. STENHOLM. You do have a role, but you would not choose to play that role under the rules and regulations that are suggested to be promulgated upon you today?

Mr. RUSK. That is correct, sir.

Mr. STENHOLM. Does everyone at the table support the concept for penalties on individual citizens for illegally dumping of used oil? Is this fairly consistent in all groups? Does anybody see problems with that?

Mr. KENT. Mr. Chairman, I think you have to deal with what they do with it. If it is contaminated product, it leads into the same problems we discussed a few minutes ago. If they are penalized and they bring you product and we have to accept it, but that product is contaminated, then I don't know that I would be in support of that without addressing those other concerns.

I don't think that in and of itself would be sufficient.

Mr. STENHOLM. It seems to me that too often Federal agencies assume an adversary posture in promulgating the regulation of private sector activity. In doing so, the bureaucracy has developed the mentality that the citizens or enterprises being regulated are guilty until proven innocent. It would appear to me that a more positive approach can be taken to further the public good and the Congress should assist in redirecting Agency efforts at regulation. In regard to the regulation of used oil, do you feel EPA has found the generators of used oil guilty until proven innocent instead of the other way around?

Mr. DASKAL. I think that is a very valid comment with regard to what appeared in the Federal Register of March 10, 1986. EPA has spent a considerable amount of time and lobbying effort on the Hill claiming that used oil has been subject to Superfund all along, and that is not the case.

In our written testimony, we have stated that as far as this industry has always operated on the premise that the petroleum exclusion of Superfund covered used oil and the burden of proof is on EPA to prove that it doesn't.

The essence of what they did in the register notice is to say we are going to put the burden of proof on you, the regulated community. You have 30 days and give us data that shows that your used oil is subject to the petroleum exclusion, where the burden is really on them to show that the petroleum exclusion does not apply.

They have said you guys are guilty until you prove your innocence, and that is not right.

Mr. THIEMANN. We have taken the same approach in our comments to the Agency. If the Administrative Procedure Act is to mean anything at all in that kind of rulemaking proceeding, EPA has to bear the burden of proof and come forward with a properly documented basis for a listing decision, whether it is the full one or the partial listing they came out with in March.

What they have failed to do is that there has been no test made by EPA and Franklin Associates' data base of various types of used oil. Truck stops are getting lumped in under the exact points you are making. This is guilt by association.

Mr. DASKAL. If I could add one other point. In the State comments, the State of New Jersey, which has listed used oil as a hazardous waste, specifically took EPA to task and said,

> You have not done the testing on the varieties of used oil to determine whether or not each individual type of used oil meets the criteria for hazardous waste. We have done it at the State level, why can't you do it at the government level?

In a trade publication called Inside EPA, EPA claimed there is a smoking gun memo where EPA staff looked at it and decided they did not have time to determine because of the RCRA deadlines whether or not each type of used oil individually met the criteria for listing as a hazardous waste so they decided to float the proposal to list all used oil as a hazardous waste and I think that causes not only the State of New Jersey, but causes a number of us in the used oil regulated community a significant amount—it disturbs us very deeply.

While we are talking about State comments, EPA, in its testimony, indicated that the State of New York was in favor of a listing decision. We have talked to the New York people and I think that New York's position, if it ever was in favor of the listing, would not be prolisting, but would be violently opposed to the listing.

They mentioned that New York has a law saying if you are a service station, you must accept oil that is brought in by a do-it-yourselfer. Our advice is, we don't think that if used oil is listed as a hazardous waste, we don't think such an opinion would be valid.

I think maybe it would be advisable to contact the New York people directly. I think that the New York Department of Environmental Protection is very much against EPA listing used oil as a hazardous waste because they realize that the environmental consequences would be extremely adverse.

Mr. **Stenholm**. Would it be technically feasible to have—maybe I ought to rephrase the question. Do we now or did we before you stopped accepting the oil, provide for the testing of the oil as it is picked up at your station?

Mr. **Rusk**. There is one quick and dirty test that can be done——

Mr. **Stenholm**. Mr. Combest asked that question. What I am talking about is would it be conceivable and realistic that at any collection station you would routinely take a sample as it is picked up, whether it is mixed with other samples or not? Is that not done?

Mr. **Rasheed**. That is not practical, Mr. Chairman.

Mr. **Stenholm**. Why?

Mr. **Rasheed**. You are saying that a do-it-yourselfer that comes in with a gallon of product that could be paint mixed with oil, transmission fluid, antifreeze, you are saying that each time he comes in with that gallon——

Mr. **Stenholm**. Not the individual, but the receiving station.

Mr. **Rusk**. There are no quick and dirty tests I could do. Further, EPA's position——

Mr. **Stenholm**. Not you, I am saying the collector, and I am thinking in terms that if we have a problem because some abuse it, the quicker you catch it, the better off everyone is. We had this recently in milk in Arkansas, an unfortunate situation that occurred and it was not caught immediately because no one was doing the test. It was only when somebody did the test they found they had a problem and they quickly tracked it back and found out who was the guilty party.

I guess my west Texas commonsense approach is if this is a good idea, and I think it is, that we have an oil collection facility so that the citizens of America can have a place to bring their used oil, you say you would like to have it, but not under the rules and regulations that are being suggested, but you would like to be that person again, have your sign back. If that is the case, it seems that if we had a testing system that would take a sample at your station that would be checked by whoever is receiving it and as long as you are clean, you get a gold star, but if somebody slips in a monkey on you once, you say,

> Pete, you got a little problem. I don't know what has caused it, but you have a little problem this time, nothing major we can't handle, but you have a problem.

At least then we have a way of getting a handle on it providing the rules and regulations are such that you are willing to continue to operate under that system.

Mr. **Rusk**. There are two ways. One is when they come to pump out my tank they take a small sample and bottle it. The other way is if they get a tank wagon back at the plant and say, "Oh, boy, there is something funny there." They come around the next day or within a day or so and pull a sample from each tank because I am not going to be able to dilute it that much in a day or so.

That is the current state of the art.

Mr. **Rasheed**. The only way we could protect ourselves would be to check every sample of do-it-yourselfer oil before we dump it into our tanks and that doesn't seem to be feasible, but that is the only way that we could protect the integrity of our oil today.

Mr. **Stenholm**. As it is being proposed, but I was asking the question as to another alternative that might meet the environmental concerns we have and let you folks continue to do what you have been doing.

Mr. **Rasheed**. Which they would like to do.

Mr. **Rusk**. This is easy because EPA told me the correct method. Householder waste, almost regardless of what it is, is by definition not hazardous, even if heavily contaminated. Their answer is separate collection facilities maintained by me and I would have to document what was mine in tank A and what was theirs in tank B. That is their solution.

Mr. **Stenholm**. That runs into some problems.

Mr. **Thiemann**. I think the ultimate problem though, Mr. Chairman, is the liability question and that is what I think Mr. Rasheed and Mr. Rusk are both trying to answer. But they are looking at how far back up do you do the testing. I think the recyclers are willing to do the sample testing and can do so within their economics, but it is the problem of what happens to the generator if there is a hot load.

If that is termed to be hazardous, if you have a listing as a hazardous waste and you are now Superfund, and if that exemption does not occur, then the truck stop or service station for that one load has all of a sudden taken on Superfund liability. That is where the problems kick in and why we would still have a continued reluctance to go in that direction.

Mr. **Stenholm**. I think it is very clear from this testimony today and from others over the life of the period of this problem that if you proceed in going that direction you are not going to have a program and the environmental problem is going to be worse. That is so evident to me I don't see why everybody doesn't see that.

Mr. **Rusk**. In fact, we have gotten rather tired of saying it.

Mr. **Daskal**. Mr. Chairman, one thing I didn't want to leave the impression—we have been talking a lot about Superfund and the impact of the listing and I think it is something that my organization in its comments to EPA hasn't stressed enough and that is the management standards as well.

We think that the management standards are the key to an environmentally sound recycling system and if you closely analyze the legislative history of RCRA instead of analyzing just the thing saying to protect the human and health environment, what Congress was concerned about was attacking unsafe methods of recycling, but at the same time even if we solve the listing problem we still have significant problems in the management standards, and I will give an example.

Secondary containment was mentioned by one of the panelists. One of the things that has upset us the most in this whole regulatory process is the data base generated by EPA to justify their listing. They came up with a 250-page regulatory analysis that claimed that recycling would increase, that you would have a benefit of 700 cancer cases a year saved, and to be brief, this whole thing shows just a fundamental lack of any knowledge whatsoever of the realities of the petroleum marketing industry and how used oil is recycled through service stations.

EPA's consultants called us in July 1985. We weren't asked detailed questions. We were asked whether or not we could live with $1,300 of regulatory costs per year. If you go back to the analysis, EPA analyzed the financial impact of the regulation on generators in terms of the overall profitability of the generators business.

Basically they took the approach we will take the profit out of 2 percent of your business and the other 98 percent is still there, so you are not going to care if we take all the profit out of your used oil recycling business.

Mr. Kent testified earlier that his used oil recycling business stands alone. What we have told EPA is that where your regulatory impact analysis is totally wrong on one account is that you took a macroeconomic approach to a microeconomic problem. We don't care if it is our overall profits that are being disturbed. The dealer is just going to look at how this affects his used oil recycling and if it renders it unprofitable, he is going to chop it off.

I could go on and on about the impact of the regulatory analysis, but another thing that drove us nuts was the business about underground storage tank secondary containment. That is one of the silliest ideas I have ever seen. We have gone around the country, asked the National Association of Attorneys General, everybody, give us one instance of where used oil has escaped from a storage tank and caused any sort of environmental damage. There is nothing out there, it has never happened, but the impact analysis—they assume that 10 percent—that used oil storage tanks pose the same risk as gasoline tanks and that at least 10 percent of them are leaking and pose similar threats of environmental damage.

That is just not so and where we have a lot of heartburn over the proposed management standards and what we told the Agency is if you had come to us earlier in the process, granted they have bent over backward and Mr. Lehman in particular has been most helpful, but if you had come to us earlier in the process and given us a chance to have some input into this regulatory impact analysis, it could have been accurate, but now we have this document out there that is just as wrong as wrong could possibly be and when you ask EPA the question, they said, "Well, things are different. We didn't look at the insurance problem. We didn't look at the cost of crude oil. That is not where we see the problem."

That thing is so fundamentally flawed, it is grossly misleading and the fact that this document is being used to justify regulation that would essentially put us all out of the recycling business is something that turns the stomach of everybody who are generators.

Mr. Rasheed. If you take the oil by do-it-yourselfers and the oil by service stations, you will see there is a marked difference between our figures and theirs and where they got the figures from, nobody can figure out.

Mr. Thiemann. I think what happened is the underground storage tank standards that EPA has issued to date are for toxic chemicals and EPA has decided that secondary containment is a good idea. They haven't remotely gotten to the point of even proposing rules for underground tanks that were brought under regulation in the 1984 RCRA amendments.

There has been a lot of talk and tentative options going back and forth in the office at EPA, but they haven't proposed regulations. We find objectionable that EPA has picked up the toxic chemical secondary containment requirement for used oil tanks when they haven't finished addressing the issue on overall underground petroleum tank storage requirements for existing and new tanks.

Mr. STENHOLM. Thank you very much, each of you, and the members of this panel. I think it has been very helpful. Hopefully it will be very constructive for us. I would say that the request which I believe Mr. Rasheed made of this committee to formulate a letter and express certain things—it is fully my intent to do so. Too, I will continue to work with Mr. Skelton and others to come up with a reasonable, commonsense approach to this problem.

A program, such as mentioned by Mrs. Long and others, providing for the education of the general public on used oil disposal could be carried out through product labeling. You have no problem with labeling, which many times is a concern to business, and you have no problem with penalties.

I guess the one thing I would like to see is everyone is innocent until proven guilty. When you find somebody that is truly guilty, a good, long rope and an oak tree would be appropriate for that individual.

Mr. KENT. The Texas way, I can relate to that.

Mr. STENHOLM. Thank you very much.

We will call our next panel, panel 6: Jacqueline Warren, Natural Resources Defense Council, New York, NY. I believe Dana Duxbury is not here, so it will be a panel of one, Jacqueline Warren.

TESTIMONY OF JACQUELINE WARREN, STAFF ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL, NEW YORK, NY

Ms. WARREN. Thank you, Mr. Chairman.

I am a staff attorney for the Natural Resources Defense Council, which is one of the Nation's environmental membership organizations with a staff of about 100 people and 40 lawyers and scientists who have been working among other things on toxic substances issues and in particular trying to achieve more efficient and effective control and proper disposal of hazardous waste.

We worked on the 1984 amendments to RCRA and have generally been supportive of EPA's proposal.

I feel a bit like a skunk at the picnic today because I want to reiterate the concerns about environmental risks that are posed by mismanagement of used oil. Many of the previous witnesses tended to disparage those risks as not a problem. It seems to me that the Congress is giving EPA two conflicting signals here because section 3014, when enacted, was accompanied with statements that the mismanagement of used oil is a problem which has resulted in substantial environmental and health risks and costly clean up. The EPA was directed to make decisions about how to control that problem.

The signal that the EPA is getting here today is one that raises serious questions about the particular approach that they have taken. However, I don't think that anybody questions that there is some problem with respect to environmental health resulting from mismanagement of used oil.

I also think the do-it-yourselfers issue is a separate problem since the bulk of their used oil is not going into the management system today and that problem won't be affected by listing used oil as a hazardous waste.

That is part of the larger problem of the disposal of toxic household wastes. Nobody has come up with a good solution to it yet.

I see two problems arising from EPA's proposal. One is the problem of collecting do-it-yourself oil. Another is the concern about Superfund liability. Clearly if we want to have automotive used oil put into a proper management system, we have to have collection facilities for it.

Ideally, truckstops and gas stations are the places where that should be done and if the Superfund liability problem that has been expressed so frequently here and in the comments to EPA is one of the major concerns impeding collection, then that problem should be addressed separately.

I think that the Skelton amendment moves in that direction, but the problem is that no matter how EPA defines used oil as a hazardous waste, either by concentration limits or by ultimate end use or by categories, the problem of adulteration as it moves through the management system remains. EPA's authority to deal effectively with that problem only attaches under the hazardous waste system.

The subtitle (d) program, which is solid waste management, has been underfunded and is practically nonexistent now at the Federal level.

Many of the States and particulary New York have complained bitterly about the absence of funds to help support a better solid waste management system.

If you simply take the suggestions that some of the witnesses have made, which is to not list used oil as a hazardous waste, the problem is not going to be solved. It seems to me that you have to parse with a scalpel rather than a sledge hammer.

If there are ways to identify used oil which is not heavily contaminated with toxic products that is only a part of the problem. You can alleviate the liability concerns for the generators, but once that oil moves into the collection system on the way to recycling, it can be mixed with hazardous wastes. The adulteration documented in the past is still going to occur unless there are good and enforceable requirements to assure that that doesn't happen.

The EPA's authority to deal with adulteration of used oil outside the hazardous waste management system is not good. Even if EPA were to follow one suggestion, to issue regulations under section 3014(a), for performance standards for recycled oil rather than management standards for recycled oil which has been listed as a hazardous waste, the Agency would not have the benefit of assistance from the State program component of RCRA. EPA won't have their criminal enforcement authorities either, although there are indications of some criminal involvement in the recycled used oil business.

To tell EPA to run a nationwide program without the necessary enforcement tools, I think, is relegating the special management standards to a paper program at best.

I would like to dwell for a moment on the environmental and health risks associated with used oil. In the EPA's regulatory impact assessment, there are a number of tables showing EPA sampling of many batches of used oil and the components of the used oil. EPA found that in 70 to 100 percent of the samples there were high concentrations of very toxic substances.

I have attached a couple of those tables to my testimony from the regulatory impact assessment.

Several of the substances are carcinogenic. The impact assessment did not consider other than carcinogenic risks. However, many of the substances are also toxic. Some others are not carcinogenic, but nevertheless are quite toxic.

Many are very mobile in groundwater and have been implicated in used oil recycling facility contamination incidents.

The difficulty of simply leaving the system as it is, I think, is that we are going to be continuing to have as an externality of the waste oil recycling business the environmental and health damage that occurs. This damage will have to be paid for by the larger society rather than by making the people responsible internalize the cost that their activities have posed.

It is a difficult problem and I don't have perfect answers, but I think that leaving the status quo is not the answer. I think that we need to alleviate the Superfund liability concerns that many of the generators have expressed. However, we don't want to alleviate the Superfund liability concerns that the collectors, transporters, reclamation facilities, and recyclers should have as part of the business that they are doing.

There have been just too many examples of hazardous wastes being diluted in used oil. From the point of view of an organization like NRDC, we are concerned about what people may be exposed to down the line through contaminants in their drinking water. We're especially concerned about exposure to contaminants in apartment house oil which is burned in incinerators or boilers that don't have the Btu capacity to destroy those substances and can produce even more toxic products. This has been a problem particularly in the disposal of oils coming out of transformers and other electrical equipment which contained significant concentrations of PCB's.

The solution is to try to find a way to address and accommodate the concerns we have heard today, but that also moves toward correcting the environmental problems that have occurred. I don't believe that we presently have an efficient and well functioning used oil management system although an earlier witness today characterized it as such.

We may have an efficient system in terms of encouraging people to bring in the oil or moving it from the generator to the collection point. It is not as good as it ought to be, however. I second the witness who said that we need a better public awareness and public education program on that.

Once the oil leaves the first collection point the problems occur. Unless it can be monitored all the way along, which means sampled at the point where it is first collected and sampled as it moves to the point where it is going to be recycled, the possibilities and probabilities of contamination and adulteration I think are going to still be there.

I would like to conclude with just one reference back to the problems that the Congress talked about in 1984, when the amendment was made part of the overall 1984 amendments.

EPA, in their regulatory impact assessment, put together a list of 80 mismanagement situations associated with used oil, and recycling, and almost 30 percent of those were in the storage of the oil. Some problems resulted from surface impoundments or lagoons in which waste oil is held, which is a form of storage. Still other problems came from used oil stored in tanks and in drums.

EPA does not have the resources to do the kind of inspection that would be required to make sure that even minimal maintenance, not necessarily containment, but minimal requirements to ensure the environmental safety of the storage facilities were carried out. The States have to play a role in this.

We have heard that eight States have listed used oil, or have at least some definition of used oil as a hazardous waste. That says to me that 42 States have not done so. They may be thinking about it, but unless the Federal Government can take the lead on this and establish a program that the States will then take over and enforce, I don't think that we are going to see any significant improvement in the environmental harm and risks posed by contaminated recycled oil.

Thank you

[Ms. Warren's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF JACQUELINE WARREN, STAFF ATTORNEY, NATURAL RESOURCES DEFENSE COUNCIL, NEW YORK, NY

The Natural Resources Defense Council (NRDC) is a national non-profit environmental organization supported by more than 60,000 members and contributors dedicated to conservation of our natural resources, and protection of public health. For the past decade, NRDC's staff lawyers and scientists have actively sought enactment and effective implementation of federal and state laws and regulations to ensure that the generation, management and disposal of hazardous wastes do not threaten health or the environment, especially through contamination of groundwater and air. NRDC also worked for passage of the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), which, inter alia, specifically require EPA to regulate recycled oil "as may be necessary to protect public health and the environment...."* Last February, NRDC commented favorably on the Environmental Protection Agency's proposals to list used oil as a hazardous waste, and to regulate recycled used oil activities to minimize the well-documented hazards associated with the collection, transport, storage, reclamation and use of recycled oil.

In general, NRDC believes that EPA's proposals strike a reasonable balance between protection of health and the environment and stimulation of used oil recycling. The stated Congressional intent underlying Section 3014 of RCRA makes clear that health and environmental protection are of prime concern. According to the Conference Report:

> It was never Congress' intent that protection of human health and the environment be subordinated to the

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* RCRA §3014, 42 U.S.C. §6932.

> continuation of used oil recycling activities. The Agency can and should prohibit or control used oil recycling practices that it determines will pose a potential hazard to human health and the environment even though such regulations would impede recycling.
>
> The intent of the provision is to make it clear that Congress' paramount interest in regulating used oil is to assure protection of human health and the environment.

H. Rep. No. 98-1133, 98th Cong., 2d Sess. 114 (1984). Consistent with this direction from Congress, in November, 1985, EPA proposed to list used oil as a hazardous waste, but also to impose significantly less stringent management standards on used oil that is recycled.

NRDC supports EPA's proposals for several reasons. First, surveys of used oil clearly document the presence of numerous toxic contaminants. The attached tables, which were taken from EPA's Regulatory Impact Analysis of Proposed Standards for the Management of Used Oil, show that extremely toxic contaminants are present in used oil at high concentrations. When oil containing such contaminants is burned for fuel, which is the end use of most recycled oil, these contaminants are not destroyed, but are emitted into the air. Moreover, even more toxic substances, such as dibenzodioxins and dibenzofurans, may be formed from inefficient combustion of PCBs and chlorinated solvents. Improper storage and handling of contaminated oil can also result in serious contamination of groundwater supplies. EPA's Used Oil Background Document clearly documents that such contamination incidents have frequently occurred. For all of these reasons, NRDC supports listing used oil containing toxic contaminants as hazardous wastes. Inclusion of used oil in the hazardous waste management system created under RCRA will help to prevent future contamination incidents from occurring, and will thereby protect health and the environment.

Past history has shown that used oil recycling as currently practiced can pose grave and costly environmental and health risks. The extensive documentation accompanying EPA's proposed used oil listing and recycling rules shows that costly contamination incidents associated with used oil recycling activities have repeatedly occurred. For example, EPA's Used Oil Background Document contains a summary of 80 major "mismanagement" incidents showing that used oils are capable of causing substantial harm to health and the environment if not properly managed.* In NRDC's view, the hazards posed by improper handling, storage, recycling and burning of used oil warrant its inclusion and control in the hazardous waste system established under RCRA.

There is a persuasive body of evidence supporting EPA's conclusion that used oil is a hazardous waste and should be listed as such. The prevalence and high concentrations of toxic contaminants in used oil clearly meet the criteria for listing under RCRA §3001. Section 3014 of RCRA, which authorizes the promulgation of special standards for recycled used oil that has been listed as a hazardous waste, does not in any way alter the criteria for listing under §3001 or the Agency's duty to list used oil that EPA has determined is a hazardous waste. Section

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* Environmental Protection Agency, Used Oil Background Document, Appendix A, Summary of Damage Incidents Resulting From Used Oil Mismanagement, November, 1985.

3014 does not preclude such listing, and expressly contemplates that at least some recycled oil will be managed as hazardous waste. Given the large volume of used oil generated annually, an estimated 1.15 billion gallons a year, and the large numbers of generators and handlers, more that 500,000 and 1,000 respectively, there is an urgent need for regulatory controls to prevent future harm from used oil recycling activities. Listing used oil as a hazardous waste is a necessary first step toward achieving this goal.

In response to numerous industry objections to EPA's proposal to list used oil as a hazardous waste, the Agency requested comments on whether used oil could be listed for purposes of disposal but not for purposes of recycling. NRDC has strong objections to such an approach and has urged EPA not to bifurcate the regulation of used oil for several reasons.

As we read the statute and legislative history, RCRA does not authorize EPA to exempt a waste from listing merely because it is expected to be recycled. Listing hazardous used oil destined for disposal but not for recycling would constitute a radical departure from EPA's current listing procedure, and would set a bad precedent for exempting from listing under RCPA other hazardous wastes destined for recycling. Used oil, like other hazardous wastes, remains hazardous until re-refined. Thus, the identified dangers of health and environmental injury accompanying the collection, transport, storage and reclamation of hazardous used oil would not be prevented or controlled if used oil were exempted from the RCRA system at the outset, merely on the basis of its intended ultimate use.

Failure to list used oil bound for recycling would also create substantial enforcement problems for the EPA. The Agency would bear the entire responsibility for nationwide enforcement of the special recycled oil management standards, because states would not be required to adopt a regulatory program to enforce them. In addition, because recycled used oil would not be listed under RCRA, EPA could not invoke its criminal enforcement authorities under RCRA §§3008(d) and (e). In the face of federal budget cuts and reduced Agency resources, NRDC fears that lack of enforcement would relegate the special regulatory standards for recycled oil to merely a paper program.

For the reasons stated above, NRDC remains strongly supportive of EPA's proposal to list used oil as a hazardous waste. EPA's Regulatory Impact Analysis of the proposed used oil management standards concluded that more used oil would flow to recycling because of the prohibition on road oiling, and that adverse impacts on the recycling industry would be minimal.* Although automotive repair shops would suffer more than other generators, there would be only a slight impact overall. The impact of the regulations would fall most heavily on the "intermediary facilities," i.e., collectors and processors, 92% of which are small businesses, according to EPA.** As a consequence, the Agency's analysis predicts a restructuring of the industry to a smaller number of larger operators. Historically, these intermediary facilities have been most frequently implicated in used oil contamination incidents, with society left to absorb the high cost of clean-up.

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* Regulatory Impact Analysis of Proposed Standards for the Management of Used Oil, U.S. Environmental Protection Agency, November, 1985, p. IV-51 (hereinafter "Regulatory Impact Analysis).

** Regulatory Impact Analysis at V-57.

In 1984, Congress determined that such businesses should be required to internalize the costs of preventing or controlling environmental and health risks resulting from their activities. These firms are, after all, engaged in what may fairly be characterized as ultra-hazardous activities. Thus, EPA was authorized to list used oil as a hazardous waste, even where the used oil is destined for recycling. To avoid undue adverse impacts on recycling, the Agency was further directed to establish special management standards for listed used oil which is recycled. NRDC believes that the difficult but necessary policy choice Congress made in 1984 was and remains the correct one. As the House Report on the 1984 Amendments explained at the time,

> The Committee is taking this action for a number of reasons. There is mounting evidence of harm being caused by improper recycling of used oil. Obvious examples are Times Beach, Missouri, as well as other incidents involving dioxin contaminated used oil, the large quantities of used oil being burned as fuel in inefficient combustion units, and the many used oil recycling sites on the list of Superfund National Priority Sites.

H. Rep. No. 98-198, Part I, 98th Cong., 1st Sess. 64 (1984).

Section 3014 of RCRA provides EPA with much flexibility to shape a regulatory program for recycled used oil that protects health and the environment while not unduly impeding recycling. NRDC believes that the Agency's regulatory proposals to list used oil as a hazardous waste, and to establish special management standards for recycled used oil achieve a reasonable balance between these objectives. A decision to exempt from listing as a hazardous waste used oil bound for recycling would again relegate environmental and health protection to a secondary concern, with the predictable adverse consequences we have already experienced. For this reason, NRDC continues to support the Agency's original listing proposal, and urges that it be promulgated in the near future.

Att. I

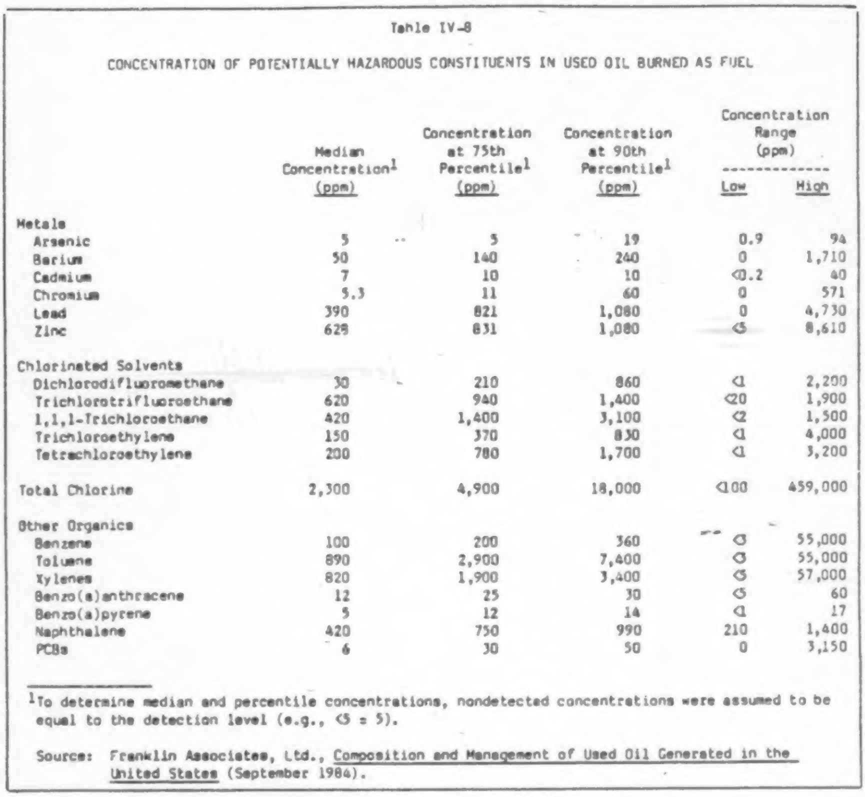

Table IV-8

CONCENTRATION OF POTENTIALLY HAZARDOUS CONSTITUENTS IN USED OIL BURNED AS FUEL

	Median Concentration[1] (ppm)	Concentration at 75th Percentile[1] (ppm)	Concentration at 90th Percentile[1] (ppm)	Concentration Range (ppm) Low	Concentration Range (ppm) High
Metals					
Arsenic	5	5	19	0.9	94
Barium	50	140	240	0	1,710
Cadmium	7	10	10	<0.2	40
Chromium	5.3	11	60	0	571
Lead	390	821	1,080	0	4,730
Zinc	629	831	1,080	<5	8,610
Chlorinated Solvents					
Dichlorodifluoromethane	30	210	860	<1	2,200
Trichlorotrifluoroethane	620	940	1,400	<20	1,900
1,1,1-Trichloroethane	420	1,400	3,100	<2	1,500
Trichloroethylene	150	370	830	<1	4,000
Tetrachloroethylene	200	780	1,700	<1	3,200
Total Chlorine	2,300	4,900	18,000	<100	459,000
Other Organics					
Benzene	100	200	360	<3	55,000
Toluene	890	2,900	7,400	<3	55,000
Xylenes	820	1,900	3,400	<5	57,000
Benzo(a)anthracene	12	25	30	<5	60
Benzo(a)pyrene	5	12	14	<1	17
Naphthalene	420	750	990	210	1,400
PCBs	6	30	50	0	3,150

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[1] To determine median and percentile concentrations, nondetected concentrations were assumed to be equal to the detection level (e.g., <5 = 5).

Source: Franklin Associates, Ltd., Composition and Management of Used Oil Generated in the United States (September 1984).

Source: Regulatory Impact Analysis of Proposed Standards for the Management of Used Oil, prepared for Economic Analysis Branch, Office of Solid Waste, U.S. Environmental Protection Agency, by Temple, Barker & Sloane, November, 1985, p. IV-42.

Att. II

Table IV-9

HEALTH RISKS FROM CERTAIN CONTAMINANTS
IN USED OIL

Pollutant	Risk
Metals	
Lead	Brain and renal damage
Barium	Muscle excitability
Arsenic	Cancer
Cadmium	Cancer
Chromium (hexavalent)	Cancer
Chlorinated Solvents	
1,1,1-Trichloroethane	Cellular necrosis, lung inflamation
Trichloroethylene	Cancer, liver and renal damage
Tetrachloroethylene	Cancer, liver and renal damage
Other Organics	
Benzene	Cancer, blood effects
Benzo(a)pyrene	Cancer
PCB	Cancer
Toluene	Neurologic and reproductive damage

Source: Regulatory Impact Analysis of Proposed Standards for the Management of Used Oil, prepared for Economic Analysis Branch, Office of Solid Waste, U.S. Environmental Protection Agency, by Temple Barker & Sloane, Inc., November, 1985, p. IV-43.

Mr. STENHOLM. Thank you.

Mrs. Long.

Mrs. LONG. EPA, by its very name, is charged with the responsibility for protecting the environment, so I don't feel that it is an adversarial relationship between the legislative branch of Government and the EPA.

It is a matter more of being able to get together on what is best for the environment, and so, I appreciate your comments but it seems to me there has to be a meeting of the minds somewhere, so we can reach what is going to be best for all the parties concerned in this.

Whatever suggestions that EPA has, we certainly welcome, or any agency that is charged with the responsibility for protecting the environment. That has to be our No. 1 priority, that is a statement rather than a question.

Ms. WARREN. I agree. The concern I have is that some form of regulation of used oil generation and collection is the first regulation that many small businesses will have. We heard that from an earlier witness.

Their reaction probably reflects some just fears about what that may mean. We have to look beyond those fears, and not listen to the don't-do-it argument, but listen instead to suggestions about how we can accomplish all the objectives that are being sought.

I don't believe that simply declining to list used oil as a hazardous waste, no matter how contaminated it is, is going to move us toward the goal that the 1984 amendment was designed to achieve.

Mr. COMBEST. I don't think anyone here is arguing the point that there are not problems with used oil. We are all hoping to, recognizing the fact you had given some statistics about some of the things found in used oil, we are not intending to argue the fact, we have got to do something with it.

We don't want to put it on our chickens or our cows, but we have to find a way to deal with it.

The whole solution is going to be something that provides the purpose and is something we can live with. Maybe we are all going at least in the same direction, maybe taking different paths to get there.

I needed to clarify something. Did you say that unless used oil is defined as a hazardous waste material, that the problem would not be solved?

Ms. WARREN. I think that unless at some point, contaminated used oil is defined as a hazardous waste or unless Congress gives EPA some new authority to deal with it in terms of criminal enforcement and State program components, which they currently get by listing it as a hazardous waste, that the problem won't go away. If EPA sets up a program that they have the complete responsibility for enforcing and don't have any criminal authority to utilize in that enforcement, it won't be enforced.

It will be a paper program, there will be voluntary compliance with it, which will be effective in some places, and in a lot of places there will be no compliance..

Mr. COMBEST. Have you assessed—I don't know whether you heard earlier testimony or not, when the Environmental Protection Agency, Mr. Porter, was here, and had shown the charts, were you here then?

In the area after they collected the used oil from the sites and put it through various processes, minor processes, re-refining companies, have you seen the analysis of that product when it comes from those processing plants?

Have you studied that analysis?

Ms. WARREN. Yes; we have. In our comments to EPA on their proposed management standards, we urged that there should be further specifications set for other contaminants in the refined used oil product in addition to some they have already set, but generally we were supportive. We didn't have major problems with the proposal.

Mr. COMBEST. OK. I guess one of the things that this whole thing is centered around, too, we have two classes, and pretty much, apparently from everything I have heard, the oil which is strictly—which has been protected just from crankcase oil, for example, and has gone in through the process, it has been generally found to be cleaned of some of the most difficult pollutants or other types of chemicals.

I don't think there is any argument among us here that there are those areas where that is not the case, and they have got to be dealt with strongly, stringently, but in dealing with it is where we want to get.

You indicated that you had suggested that maybe we have got to deal with the do-it-yourselfer oil people or people who change their oil on their own, separately, and yet, this seems to me like it has got to be a whole part of an integral thing where some States are requiring if a person is in a service station business, that they accept that.

We have to be very careful where that burden of proof is placed, as far as whether that person is doing a service to the community and to the environment, by taking that oil, rather than letting it go into the dumpster, and where that liability falls, and then how much is that individual going to be responsible for, when they are actually providing a service required by the Federal Government.

The States that have come to the regulation—still 42 that have not—there is still a problem, and I believe in the chairman's opening statement, they listed those States that had regulatory authority over this now that have imposed, or opposed the EPA's ruling or bringing the used oil considered as a hazard under EPA findings, so evidently they feel it might be detrimental to the long-range goal, and that is to hopefully keep this from being a pollutant.

It is helpful to have differing views on it, and somewhere, hopefully, we can come up with a balance that works.

Ms. **Warren**. I have not seen the arguments of the States that have already listed used oil, but opposed EPA's listing it. They consider at least some volume of used oil to be hazardous waste, and their objection to EPA's superimposing some new regulatory program on top of theirs provides a partial explanation of why they would not want EPA to do it.

I don't think you necessarily should read their objection to EPA's listing as an objection to listing used oil as a hazardous waste per se, because they have already done it themselves.

Mr. **Combest**. Not the used oil itself, but some of the things in used oil should be a hazardous waste and, unquestionably, they are.

The used oil itself, though, as a vehicle for some of these other pollutants is the question we have got to get to: Do we do that, and at what point, and what is added to it that becomes a problem rather than the used oil itself?

I have no problem with the fact that there are certainly in a lot of areas going to be things in used oil, things in drinking water, whatever that could be hazardous waste, but it is those items themselves rather than the carrier that we have got to separate out and see how we deal with separately, but thank you for your testimony.

Mr. **Stenholm**. Ms. Warren, isn't one of the basic purposes of RCRA to encourage recycling?

Ms. **Warren**. It is to encourage recycling, but it also has an underlying purpose to prevent damage to health and the environment as a result of the handling of hazardous waste.

There are two competing objectives which have to be accommodated. In the 1984 amendments, we hear Congress saying over and over that they never intended to subordinate health and environmental concerns to recycling, and that if controls to prevent such damage have some adverse impact on recycling, that is the choice they were making. I think that it is the right choice.

That is not to say I don't support recycling. If we had some way to channel the used oil from the time it is brought into a gas station, all the way through to recycling without the kind of adulteration problems in transportation and storage, I would be much less concerned about some of the suggestions I have already heard.

We have already seen a big problem associated with used oil recycling. I have not heard good suggestions so far about how to accommodate the health and environmental concerns, while also continuing to support recycling.

If the price of crude oil goes up, as many predict it will, and gasoline prices are already starting to show it will go up again, the economics will stimulate a renewed interest in recycling. We are seeing another factor, oil prices, reflected in the testimony here, in addition to EPA's proposed listing.

Mr. STENHOLM. Are you suggesting we should increase the price of oil?

Ms. WARREN. Yes; we have no control over it. The marketplace controls these things when the price of crude oil goes down, and it is doing that right now, recycled oil is not competitive with crude oil. This is a problem the recycling industry has, regardless of what the EPA is doing.

The EPA rule makes it a little worse. The price of crude oil will go up again. Over the long term, it is going to go up again, and people will see a profit to be made in recycling crude oil. The question is, what do we do about used oil in the interim?

Mr. STENHOLM. I totally agree with that. You heard the testimony earlier today, you expressed yourself on the recycling question, and yes, it is important, but if I understand you correctly, the environmental concerns are much more important than that.

How do we structure a program? How can we make a Mr. Rusk, for example, make him accept this particular recycled oil with all of the liabilities that go with it? You have said we might have to deal with the public liability question, but how do we force people to do those things that EPA is suggesting? How do you force them to do that?

Ms. WARREN. I don't want to force them to do it, but to educate them into understanding why they should do it. I would also like to relieve people like Mr. Rusk of joint and several liability under Superfund, which would otherwise be imposed on him as a generator of hazardous waste.

However, from the point that he hands off the used oil that he has collected to another collector; and all the rest of the way through to recycling and the ultimate use of the oil, I don't think anyone else should be relieved of Superfund liability. I think that it is a hazardous activity that they are engaged in, and they ought to be responsible for the consequences of that activity, just like other people engaged in such activities must be responsible.

I believe EPA was correct in their regulatory impact assessment, in suggesting that there will, in the future, be fewer people involved in used oil recycling, and they will be larger companies that can be financially responsible for the consequences of their actions.

We have had—especially in the New York area—many very serious contamination incidents from small operators who were handling and selling hazardous wastes mixed with used oil as heating fuel. The way to prevent such practices from continuing is to treat the oil as hazardous wastes and include it in the RCRA system.

Mr. STENHOLM. What do you do with the oil from your car when it is changed?

Ms. WARREN. I live in New York City, and I don't have a car. I also think that Congress has some responsibility to help set up a system not just for used oil from homeowners, but for the large volume of hazardous material that homeowners generate which they throw away into the regular solid waste system. It is being incinerated with regular municipal waste and going into landfills which don't have any specifications for liners or other types of environmental controls. Yet, that material is every bit as toxic in the aggregate as the same material which is put into the hazardous waste system, because it is generated in a sufficient quantity in the beginning.

It is a problem that the whole society has overlooked for too long and the do-it-yourselfers' oil problem is a piece of that problem. With the exception of the 14 percent who bring their used oil in, all the rest have been disposing of the oil some other way all along. EPA's rule will probably make those numbers a little bit worse.

EPA didn't cause that problem, and the rule won't correct that problem, either.

Mr. STENHOLM. You still support the rule?

Ms. WARREN. I would support a modification of the rule, which, if possible, fine tuned better which used oil should be considered hazardous waste. However, EPA's sampling found that 70 to 100 percent of it contains toxic contaminants in significant quantities.

To me, that says that probably 100 percent of the used oil should be considered a hazardous waste. EPA's sampling was done in a way which was perhaps biased, in that they didn't do the kind of sampling that would show clean used oil. Even clean used oil has some heavy metal contamination, even if it doesn't have any organic solvents.

There still are toxic heavy metals in the used oil which would have to be reduced in concentration before it can be safely recycled. Maybe some elements or some volume of used oil can be considered not hazardous waste, but I would want to see the evidence on it before I could make a judgment about it.

I am willing to accept, if someone can show me that it is possible to have clean used oil, fine, don't consider it a hazardous waste. Once it leaves the truck stop's control and moves into the recycling system, however, it gets adulterated. So we still have the same problem, which EPA won't be able to deal with in an effective way unless they can list it at some point as a hazardous waste.

You may want to give EPA additional authority to be able to say used oil is a hazardous waste at the point of pickup, but not while it is being collected at the gas station. This is different from the way the system now works, and EPA has now to work within the authorities that they have been given.

I also believe it is a bad precedent for EPA to begin saying that something is hazardous or not hazardous based on what may ultimately be done with it.

Mr. STENHOLM. Thank you very much. Appreciate your testimony.

Panel 7, Col. John Nolan, Wayne Case, Dennis Konnick, George Booth, and Ralph Higgins, come up to the table, gentlemen.

We will continue to proceed and not break for lunch.

The first witness will be Col. John J. Nolan, president, National Oil Recyclers Association of Arlington, VA. He is accompanied by Christopher Harris.

TESTIMONY OF JOHN J. NOLAN, PRESIDENT, NATIONAL OIL RECYCLERS ASSOCIATION, ARLINGTON, VA, ACCOMPANIED BY CHRISTOPHER HARRIS, SCHMELTZER, APTAKER & SHEPPARD, P.C., WASHINGTON, DC

Mr. NOLAN. Mr. Chairman and members of the committee, the members of the National Oil Recyclers are grateful for this opportunity to present our views concerning EPA's regulations for management of used oil.

Let me say at the outset, we deeply appreciate the initiative that you took, in association with Representative Skelton, to amend the House Superfund bill to exempt properly recycled oil from designation as a Superfund hazardous substance. An enactment of this amendment is essential to maintaining the oil recycling system in this country.

The issue is being addressed again in the conference committee, as you have noted, and we are hopeful with your support, agreement will be reached on statutory language, along the lines suggested by Mr. Skelton.

It will prevent those who participate in legitimate recycling activities from being needlessly burdened with the threat of EPA liability.

I want to note that the Agency has given us plenty of opportunity to present our views, in written comments, at public hearings, and in face-to-face meetings. Dr. Lehman has been very generous in receiving us. Unfortunately, however, we have gained the impression through our contacts with EPA that the Agency believes it has a strict mandate from the Congress, to make its decision on listing used oil as a hazardous waste in a very legalistic way, and without, we believe, sufficient consideration for the practical effects of the regulation on business and, indeed, on the environment.

They seem to be taking the attitude that if the stuff in the bottle seems to contain some hazardous material or materials, they want to list it, or that they have to list it in accordance with Congress' mandate regardless of how that material is being managed.

We would take another view that says it is a combination of, is the material dangerous to the environment, and is it being handled in ways that are dangerous to the environment, that really determines the question of whether it should be listed or not. So, we would hope that through this hearing, the Congress would communicate to EPA that its concern is for a safe environment in which businesses can operate profitably and not simply in regulating for regulation's sake.

You have mentioned, sir, public education, labeling, and other means of bringing the do-it-yourself oil changers into the system, but you should also stress in communications to the Agency that we need to maintain the viability of the existing recycling system, until it can be demonstrated that there is a better system that can be brought on line now.

EPA's own regulatory impact analysis shows clearly that the proposal to list oil as a hazardous waste does not result from any evidence of a real and imminent threat to the environment from oil being recycled. The analysis points out that the threat to public health and the environment is from uncontrolled dumping of used oil, and virtually all such dumping is by the do-it-yourself oil changers. That is apparently the problem. Neither the hazardous waste statutes nor EPA's regulations, existing or proposed, make any direct provision to control dumping by do-it-yourself oil changers, yet nearly half of all oil generated in this country is generated and dumped by those DIY's.

If no action is considered necessary to regulate the half of the used oil stream that is being dumped on the ground, down the sewers and into the streams, it can hardly be argued that used oil is viewed as a serious environmental hazard.

We are saying we will ignore half of the flow of the terrible contaminant, and yet the half going into a recycling system is going to have to be regulated perfectly.

Why then the great interest and urgency for regulating used oil which flows to collectors and recyclers? Serious abuses have occurred in the past. Individuals have used waste oil as a vehicle for disposing of hazardous waste in environmentally threatening ways.

Mr. Porter mentioned a significant number of Superfund sites were related to used oil. I would suspect that the problem was not so much the used oil as such, but the other wastes that were mixed with that used oil.

Ms. Warren of the Natural Resources Defense Council also mentioned the mixing of hazardous waste with used oil. The mixing of used oil with dioxin and its use as a dust suppressant on the roads of Times Beach, MO is an example of the types of abuse that should never be allowed to happen again. But we believe that the regulations already in effect, which do not involve listing of used oil as a hazardous waste, will prevent those abuses, if properly enforced.

The EPA regulations, which became effective on November 29, 1985, require that the oil processor and marketer distinguish between oil mixed with hazardous waste and oil that has only been contaminated through normal use. So, in this sense, what Ms. Warren wanted is taking place under existing regulations.

We as oil processors must look at what comes into our plants and check to see: Is it contaminated with other hazardous wastes? If it is, that whole load is hazardous waste and must be treated as such. If the oil has been mixed with any hazardous waste, it must be managed as hazardous waste in compliance with the Resource Conservation and Recovery Act.

Because that rule is in effect now, we don't gain any additional environmental protection by listing the oil itself, as a hazardous waste.

Mr. Chairman, let me emphasize that our objection to listing used oil as a hazardous waste is not based on concern that we, as oil recyclers, will come under regulation.

We are willing to comply with sensible regulations that will, in fact, protect the environment. Our concern is that with its proposal to list used oil as a hazardous waste, EPA has also proposed that the end users, the asphalt plants, and other industrial burners of recycled used oil fuel would be required to become permitted hazardous waste management facilities.

That would mean, for example, they would be required to set aside substantial funds or post a bond to cover the cost of ultimately closing down their plants, as if they were waste dumps.

They would also have to provide a security system including 24-hour closed circuit television monitoring or surveillance by guards. Businessmen have enough difficulty obtaining capital to keep their small businesses going in accordance with the regs without having to set aside funds for the eventual closing of the business, and they cannot take on the burden of becoming regulated hazardous waste facilities just so that they can save the 5 or 10 cents a gallon that they gain by burning recycled oil.

Rather than assume that burden, the burner will switch to new oil, and in this day of low oil prices, that is a very easy decision for them to make. And let me emphasize, Mr. Chairman, that keeping that used oil burner in the system is the key to safe management of used oil.

Obviously, used oil has got to go somewhere, and EPA's own study, the regulatory impact analysis, envisions only one logical end use for most of that used oil, and that is as a fuel for industrial boilers and furnaces. Take that burner out of the system and the entire recycling system falls apart. Take out the burning by apartment houses and institutions, but the industrial boilers and furnaces, steel companies and the asphalt plants throughout the country, are the logical end use for most of this oil. EPA's impact analysis shows only one really big switch in the flow of oil before regulation and after, as they envision it, and that is an additional 200 million gallons going into asphalt plant burning.

That is not going to happen if they have to become hazardous waste management facilities to do it.

You ask, Mr. Chairman, are there other good options? I assume that you mean, among other things, options that exist in today's market that can come on line now and not options that are available down the pike someplace, if we assume a $1, $2, $3 a gallon disposal fee for used oil.

All kinds of options are available if we get those kinds of assumptions, but today, the option is more oil going to industrial burners, asphalt plants, and they should not have to take on the burden of being a regulated facility to continue doing what they are doing now, burning recycled oil fuel.

Remember, that burner is a voluntary participant. Nothing forces him to rely on used oil. He has the unfettered option of switching to virgin oil and be free of all regulation, and then we all stand with the oil in our tanks and say, what do we do with it?

There should be no doubt that the businesses that have successfully and profitably burned used oil will, in fact, withdraw from the system if used oil is listed as a hazardous waste and they are made subject to regulation as a hazardous waste facility. We know this because the regulations already in effect—the so-called burning and blending rules—require that facilities that are going to burn so-called off-specification used oil fuel register with EPA and obtain an EPA identification number and our representatives, salesmen, have been out in the field talking to the plants, telling them this year to continue to burn the fuel you burned last year.

You are going to have to register it with EPA. That is all you have to do at this point, just register. Many burners, a majority in some areas, have refused to take even this simple step of registration. They would rather pay the price of new fuel than become associated with the stigma of hazardous waste. And many of them have said, "No way, I will not become part of a federally or State-regulated system, just in order to save 5 to 10 cents a gallon." If they refuse even to register, it's obvious they will not be willing to become regulated facilities.

The horror stories that they read about with high fines, jail terms, have made them scared.

Let me conclude, Mr. Chairman, by stating very briefly what we think the EPA can usefully do regarding used oil, and it is negative. First, do not list used oil as a hazardous waste if it is being recycled—that is, re-refined or converted to fuel in accordance with the burning and blending rules.

Second, whether or not they list used oil as a hazardous waste, they should not impose burdens on the burners of used oil beyond the requirements of the burning and blending rules. And I do not mean the registration, but the obligation that they have to burn off-specification used oil fuel only in the proper types of burners, which have been described.

In this connection, let me emphasize that even the registration requirement that is in the present burning and blending rules is excessive and ought to be rescinded, and we have approached EPA on that point.

We did not think it was going to be such a hurdle for these burners to get over, that their reaction would be so negative, but it has proved to be extremely negative. Even without this registration, the rules make ample provision for distinguishing between used oil and mixtures of used oil and hazardous waste, and between oil suitable for the general market and oil that should be restricted to industrial boilers and furnaces.

There is no need for the burner to register and say, I am burning off-specification fuel when I, the processor, am already obliged to keep records of every place I am sending this off-specification fuel.

If they want to know where it is going, they can come out to me and see my records.

Under these conditions, Mr. Chairman, the oil recycling system can survive and, I hope, expand so that used oil can be properly managed and not dumped into the trash or down the sewer or in the woods.

Mr. Chairman, I think most of the points I have wanted to make have been made, and I think that the oil recycling system is a great advantage to the country, and to the environment, and whatever is done regarding management of used oil, it should be done with a view to preserving the existing used oil recycling system.

I thank you.

Mr. **Stenholm**. Thank you Mr. Nolan.

Mr. Konnick.

TESTIMONY OF DENNIS KONNICK, VICE PRESIDENT OF MANUFACTURING, PETROCON CORP., MODENA, PA

Mr. **Konnick**. Petrocon is a Pennsylvania corporation engaged in the collection, processing, and marketing of used oils. For the past 16 years, we have built an organization which has been nationally recognized as a legitimate, environmentally conscientious and until recently, a profitable oil recycler. We have, during the past year, absorbed over $200,000 in increased costs due to both EPA's phase I rules, increased laboratory equipment and labor, and incredibly higher insurance rates, while facing astronomical rates or no insurance at all under phase II.

We prefer to describe our operation as fully integrated in that we own and operate all vehicles in our transportation fleet; therefore, all our collections are made by our own employees who are fully trained in the art of collection.

We accept no materials collected from or by outside services. This conservative policy allows Petrocon to produce and market an EPA on-specification product.

Petrocon has given testimony before the U.S. EPA in New York, for phase I, and in Washington, DC, for phase II. We, at Petrocon, are becoming extremely frustrated by the heavy-handed ostrich-like attitude of all regulatory bodies, both State and Federal.

We recognize the need for regulation, and we support enforcement of all regulations. However, Petrocon does not support the throwing the baby out with the bath water approach currently in vogue throughout the regulatory bodies in the Nation.

In response to free market pressures, Petrocon's current process and protocols had been established many years prior to the phase I regulations. New client's or customer's oil has always been sampled and tested by our laboratory prior to collection.

Each finished product shipment has always been sampled during loading and tested prior to shipment. Our patented flash distillation process insures that our finished product customers receive an environmentally safe product.

We do not adulterate our finished products with additives, solvents, or other contaminated materials. Petrocon resents the implication that it is automatically guilty of such behavior.

Our industry is currently functioning under the U.S. EPA phase I regulations. We cannot give this body a full accounting of the effects of phase I, let alone the impending effects of phase II, but we do see trends which are frightening.

No customer, whether a generator or consumer, wishes to become entangled in a permitting procedure. Unfortunately, permitting does not stop with the U.S. EPA, it continues downstream through the State systems.

What the EPA writes, the States rewrite. Fact: The economic justification for phase II depends upon the expansion of finished product customers within the asphalt industry.

Fact: There are no facilities, whether asphalt or not, permitted to burn recycled oil in the State of New Jersey, a State which generated over 22 million gallons of used oil per year.

The southeast portion of Pennsylvania, where Petrocon is located, also has no sites permitted as users. Why? Regulatory reluctance to sign any permit while the EPA regulations are constantly in a state of flux.

Petrocon's position has always been to support and abide by the current regulations which prohibit the blending of hazardous wastes in used oils. If the purpose of the new regulations is to eliminate hazardous waste in used oils, Petrocon finds the failure to enforce current hazardous rules concerning blending confusing.

The EPA already has ruled in force to prevent used oil products from becoming hazardous. We cannot agree that the EPA will prevent a hazardous substance from contaminating a nonhazardous substance, used oil, by declaring the nonhazardous substance as hazardous.

Once used oil is declared hazardous, the incentive for any generator to segregate nonhazardous and hazardous oils will be eliminated. Operating a small business is difficult enough without having to wear the 1986 version of a scarlet letter, an H.

During our previous testimony to the EPA, we suggested the institution of good mangement practices upon our industry. The enforcement of management standards will allow control by the EPA of a regulated substance without the stigma of being declared a hazardous site or Superfund candidate.

Included in the GMP should be the prohibition that no solvent-like material be stored inside any used oil facility. We also foresaw the impending ground water contamination due to the destruction of our industry, as is now occurring in both Camden and Atlantic Counties in the State of New Jersey.

In closing, Petrocon believes the EPA, under its phase I and phase II rules, will destroy a collection system that prevents pollution. As a result, we expect more, not less environmental degradation to occur, which of course is detrimental to the health and welfare of the Nation.

The small business representatives on this panel are currently engaged in a battle for survival against imported oil; we cannot afford the additional burdens scheduled to be placed upon us by redundant, expensive and, in our opinion, unnecessary new regulations.

Thank you.

Mr. Stenholm. Thank you Mr. Konnick.

Mr. Higgins.

TESTIMONY OF RALPH G. HIGGINS, VICE PRESIDENT AND GENERAL MANAGER, STATEWIDE WASTE OIL AND CHEMICAL CO.

Mr. HIGGINS. Mr. Chairman, could I go off the record for a personal note for you?

[Discussion off the record.]

Mr. HIGGINS. Mr. Chairman, it is difficult, having been regulated for 6 years, to try to cram that experience in 5 minutes. I will do my best to give you those facts which I know to be true from 6 years of regulation.

First, I would like to commend and thank both you and Congressman Ike Skelton for having the good judgment and insight to attach your amendment to the reauthorization bill in December.

I think it was a very smart move, a well-needed move, and I endorsed the language of Representative Skelton. In my written testimony, which I thank you for entering into the record, I have addressed your request also for alternative regulatory systems.

I will not attempt to cover that here at this time, but I will comment on one thing: I think that EPA is attempting an overkill by using an elephant gun to kill a fly.

Under Docket 3001, South Carolina's Department of Health and Environmental Control, which we call DHEC, submitted comments to EPA and their main points were:

"South Carolina has regulated used oil with no adverse effects, but Federal rules under 40 CFR 266(E), already in place, have created an impediment." I agree since the December 9, 1985, enforcement date of the 40 CFR 266(E), we have seen some major impediments; but I would also point out that South Carolina's listing of all used oil as a hazardous waste 6 years ago also created serious impediments, of which they must not be aware.

I understand why they are not aware, because they are not in the used oil business, don't depend on it for their daily bread, and I don't think one is likely to know what goes on in the world until they have become a part of that world.

The adverse effects DHEC is concerned about are: High insurance rates that now are a factual problem. My insurance rates with used oil being classified as a hazardous waste facility, have increased 1,362 percent in the last 3 years.

DHEC is concerned about their ability to police the system. They are concerned about indiscriminate dumping, which we have heard much about this morning. Recyclers have already lost customers, and since December 9, my business has been reduced 45 percent, above what it had been reduced by South Carolina regulation.

Gas stations are no longer accepting do-it-yourselfers' used oil. Where I live in Spartanburg County, the county has closed their collection tanks to the public. Asphalt plants are no longer accepting used oil fuel.

DHEC's concerns are legitimate, and I know them to be true. DHEC suggested that the Federal rules have created an impediment that should be considered thoroughly, and I hope it will be given serious consideration, and it appears it will, thanks to you.

Following is a summary of the effects of South Carolina's listing, all used oil is a hazardous waste in March 1980. The results are backed up by my business records and reports. Listing all used oil as a hazardous waste in South Carolina has:

First, destroyed legal industrial markets for burning used oil in South Carolina. This includes the State itself.

Second, has created a large number of lawbreaker generators and transporters.

Third, it has increased liability insurance rates to a fantastic and unbelievable hazardous waste level.

Fourth, it has proven the manifest tracking system will not control a lawbreaker.

Fifth, reporting requirements will not control a lawbreaker.

Sixth, has increased the operating cost of used-oil-only facilities, such as mine, and made reprocessing financially unattractive. There have been no new used-oil facilities going into business in South Carolina the last 6 years.

Seventh, it has created a situation where it is more profitable to be a lawbreaker than a law abider, as long as you get away with it. Many have in the past, and will in the future.

Eighth, it has created increased cost to industry to get rid of their recyclable used oil.

While I was growing up as a youth in South Carolina, my family, proposing to teach me compassion and consideration for others' needs and views, required me to learn a little verse.

It was called The Sinner's Prayer. The prayer is: "God bless me, my wife, my son, John, his wife, us four, and no more."

I know that this is not the oil recyclers' attitude, and I know it doesn't express the intent of Congress, but some other government people I have questions about.

There are important decisions that have to be made and they have to be made quickly. If these decisions are going to take the time that we have normally seen in the past, then proposed EPA regulations are going to kill a business that the U.S. Department of Energy, during the Arab oil embargo, spent millions of dollars encouraging us to do. It will be dead and buried.

Thank you, sir.

[Mr. Higgins' prepared statement follows:]

PREPARED STATEMENT OF RALPH G. HIGGINS, VICE PRESIDENT AND GENERAL MANAGER, STATEWIDE WASTE OIL AND CHEMICAL CO.

I am Ralph G. Higgins, Jr. , Vice President and General Manager of Statewide Waste Oil and Chemical Company, a South Carolina Corporation, which was incorporated in August 1974. The firm has been supplying processed fuel derived from used oil sources for 12 years. The company maintains an active fleet of pick up vehicles and purchases used oil from private vendors. Last year the company processed in excess of two million gallons.

First off, I would like to commend and thank Representative Ike Skelton and Representative Charles W. Stenholm for having the insight and good judgement to put forth their used oil amendment to the Superfund reauthoriztion bill in December of 1985. I would strongly endorse the language presently suggested by the House-Senate Compromise.

In Congressman Stenholms' letter of May 1, 1986, he asks for the perceptions that members of our industry have regarding EPA's proposed regulations to list recyclable used oil as a hazardous waste. I will not give you any perceptions but instead will give you facts accumulated and observed from all used oil being regulated as a hazardous waste in South Carolina since March 31, 1980. Having been in the water for six years, we feel we can suggest some very simple ways to adequately control used oil pollution without using "an elephant gun to kill a fly".

I: Impact Of Regulating Used Oil As A Hazardous Waste In South Carolina.

Before regulation, Statewide's sales records show that in the 1970's we sold reprocessed fuel to as many as 14 different industrial accounts. The State of South Carolina was counted among these accounts. This type of industrial sales of used oil fuel continued and showed promise of increasing until state regulations making all used oil a "hazardous waste" were promulgated on March 31, 1980. From that time forward it was difficult to acquire new accounts and impossible to stop erosion of then existing industrial accounts. Our sales records verify the erosion of these industrial accounts. This is confidential information we prefer not to make public knowledge, but will provide the committee on a confidential basis, if requested.

Some stated reasons given us by customers and potential customers for the erosion of industrial accounts are:

(1) Cost is not our major concern. A 10 to 20 cent per gallon differential is not enough to put up with the hassle of being regulated and the requirements that go with it.
(2) We have too much government in our business already, with federal and state tax people, I.R.S., OSHA, etc..
(3) We don't welcome and won't invite more government regulations for such a small portion of our operating costs, as fuel represents.
(4) Today they call it hazardous waste and say it is alright to burn it, but what will they say tomorrow or next week?
(5) We are not in the "hazardous business". We fear how our employees will react, if they know we burn "hazardous waste fuel".
(6) There has been far too much publicity and too many law suits associated with "hazardous waste", we will avoid any association with "hazardous waste", regardless of cost. It is cheaper not to have it than it is to defend it.
(7) Management won't allow any "hazardous waste" to be burned at our plant.
(8) They must have had a reason to call it "hazardous", I don't care what you or your test results say. I wouldn't burn it if you gave it to me.

These eight(8) remarks should suffice to show the concern of business men and potential customers for the stigma associated with the term "hazardous" and their determination not to get involved. Cost is not the deciding factor when "hazardous" describes the game. Everyone wants to clean up the environment,but industrial customers are aware that no one wants a hazardous waste clean up facility in their neighborhood.

After six years of used oil being regulated as hazardous waste in South Carolina, we find:

(1) The state of South Carolina,itself, is no longer a burner of used oil fuel. The advent of federal regulation must have been the final blow for them. Their bid invitation of September 10, 1985, for contracting to pick up the states used oil, omitted a repurchase arrangement for the first time since 1980.

(2) Statewide's industrial accounts that once numbered 14 have now reduced to only 4. One is our parent company, the only one in South Carolina. Two are in Tennessee and one is in North Carolina. At present, used oil is not a hazardous waste in Tennessee or North Carolina. If it becomes so, we will likely kiss these industrial accounts goodby.

(3) South Carolina lists only 4 commercial, used oil facilities. Two are incinerators and two are burners. One burner is a permitted hazardous waste facility which closed down its oil burning operation within the last month and the other is our parent company, on whose site we are located.

It can only be concluded that regulating all used oil as a hazardous waste in South Carolina has destroyed recycling of used oil for energy recovery, in industrial plants in South Carolina. Based on this fact, we contend that to classify recycled used oil a hazardous waste and/or require burners of non-hazardous used oil to meet management standards for used oil recycling facilities as proposed under 40 CFR Part 266.43, will without a doubt, be the noose that kills the goose that has helped the United States reclaim energy from used oil and helped control used oil pollution.

Although the name of our company implies other activity, we are permitted and handle used oil only. Because South Carolina regulates all used oil as hazardous waste, our insurance rates have increased in the last three years as follows:

(1) Used oil only transporters liability rates have increased over 88%.

(2) Used oil only reprocessing facility liability rates have increased over 1,362%.

These are the rates all burners will have to pay if the proposed 40 CFR Part 266.43 standards are required of burners of non-hazardous used oil and recycled oil is listed as a hazardous waste They simply won't do it. Need we say more on this subject?

Impact On Service Stations, Oil Change Stations And Retailers Who Perform Oil Changes and Accept Do It Yourself Oil.

In South Carolina, where all used oil is a hazardous waste, generators are subject to waste management regulations less stringent than those proposed by EPA. South Carolina R.61-79.262 requires generators of used oil to:

(1) Have and EPA identification number.
(2) Notify South Carolina of the quantity and type of hazardous waste generated.
(3) Comply with applicable manifest requirements.
(4) Keep records and make quarterly reports.

To show that parts of the required system has been circumvented and ignored, we submit the following:

> In a recent meeting in Atlanta, Georgia, a South Carolina representative showed that the total used oil generated in South Carolina in 1985, as reported by in state Treatment, Storage and Disposal Facilities Quarterly Reports, was 3600 tons or 900,000 gallons. This amount is ridiculous, if we look at the fact that there were 1, 309,172 automobiles and trucks registered in South Carolina at the end of 1985. This 900,000 gallons does not equal the vehicular oil created by only one oil change during the year. Add to this the used oil produced by industry and one must be astounded at how many generators have circumvented or ignored the laws of South Carolina, five years after they were promulgated. It does not take data or a Las Vegas odds maker to know where this oil will go if all used oil is made a hazardous in every state. The identity of the law breakers should also be evident. This comes as no surprise to those of us in the used oil business in South Carolina. We know many generators, who have little to lose and are too numerous to check,who insist on cash payment and signing no manifest or pick up tickets. Unregulated transporters and some in state permitted transporters have picked up this oil and sold it in bordering, unregulated states. If all states are regulated as hazardous waste, quess where these law breakers, who intend not to be regulated, will be getting rid of their oil. I fear only God will know for sure. South Carolina's regulating used oil as a hazardous waste has not successfully controlled a large number of generators who are willing to break the law. We cannot believe that these South Carolina generators are vastly different from the rest of the generators in the United States. They object to government regulation

and will either circumvent it by dumping their used oil or stop the practice that caused them to be regulated. South Carolina's experience proves that generators look on government regulation as a liability. In the short time since December 9, 1985, when 40 CFR Part 266.40 specifications became the law, the burden of proof placed on the generator to prove that his used oil is not mixed with hazardous waste has created an unfavorable environment for the collection of used oil by legitimate used oil people. High insurance rates and other increasing operating costs have caused the collectors of used oil to realize such a small margin of profit that, of necessity, they are passing the cost of proof of not mixing on to the generators. This cost of proof of not mixing is already a permanent liability unwelcomed by generators. We have been told by some generators that they will dump their oil on the ground before they will give it away or pay to have it removed. This must have happened,as some we have picked up for years have not used our services lately. We predict there will be plenty of this dumping even without any further regulations proposed by EPA.

We are sure the owners and managers of businesses and public service facilities, who have accepted Do-It-Yourself oil as a community service in the past, will decide the potential for receiving a mixed hazardous waste oil is too great a potential liability for the small profit they have gotten for this practice.

II: Simple Solution For A Complex Problem.

Before there can be a simple solution to the oil pollution problem some of the rules of EPA already put in place by 40 CFR Part 266, Supbart E needs be modified. There are several areas that need more realistic standards and/or more accurate means of compliance.

(A) Test Method To Determine Total Halogens.

ASTM 808-81, the specified test method, states that the test has a lower applicability level of 1000 PPM and a repeatability accuracy of 700 PPM. This renders this test unreliable in testing to meet a 1000 PPM level of halogen. To support this statement we quote form data submitted to EPA under Docket #3001/Listing of Used Oil, etc. by ILWD, Inc. on February

10, 1986. This data shows a great deal of oil failing from 4 to 5 times the 1000 PPM mixture rule, using the specified ASTM 808-81 test, in fact contains no halogenated compounds. One of these samples is an automotive used oil not related in any way to the metal working industry. Several samples that show less than 500 PPM total halogen with the ASTM 808-81 test method in fact contain 470 to 880 PPM methylene chloride (halogen) and from 5000 to 6600 PPM acetone. This should suffice to show that the mixture rule should not be enforced until industry is provided a test or tests that will accurately and fairly separate "hazardous waste" used oil from non-hazardous used oil in an economical and efficient manner.

The transporters of used oil are at the mercy of the gods and the honesty of the generator when they pick up used oil because there is no simple, quick and accurate test to determine the 1000 PPM total halogen mixture rule. Without an approved field test, there is no way a responsible processing facility can purchase used oil from small vendors, who are a vital link in the used oil chain, in a timely and economical manner. To our knowledge, this is one economical impact area that has not been addressed. Both the small facility operator and the transporter are now placed in a position of being unintentional law breakers. A practical field test should be provided before enforcing the mixture rule.

(B) Some Specification Levels.

The Rebuttable Rule is useless for used oil facilities. Oil pick up drivers and used oil only facilities, will not dare to accept the potential cost and liability of small amounts of oil near or at the 4000 PPM total halogen level to be blended in large batches that must be defended, at their cost, against the 1000 PPM or more total halogen rule.

The Chromium standard of 10 PPM is lower than the 13-14 PPM found in #4 and #5 virgin fuel, according to EPA's report to Congress SW-909, on page 46, submitted on January 16, 1981. Why should used oil be required to be lower than virgin fuels?

The Lead standard may be fine at some time in the future, however, it is not coming down in vehicular oil as fast as EPA predicted. It therefore, should not be enforced at a 100 PPM on May 29, 1986 or until EPA, along with the collective data from industry, proves that old inventories of high level leaded gasolines are depleated and that the new level of 0.1% tetraethyl lead will indeed allow a level of 100 PPM to be consistently reached in vehicular oil.

The 1000 PPM Total Halogen level is, for all practical purposes, the rule for burning in industrial furnaces and boilers. This amounts to one (1) ounce of halogenated solvent in 11.4 gallons of used oil or 1.37 gallons of solvent in 2000 gallons of used oil. This is far lower than the total halogens that can pass acceptable stack emission test in most states. We are certain that the total halogen content for highly populated areas is far less than is reasonable for open country areas like my beloved southland. Surely there is enough stackemission data available from industry to make a more realistic judgement than 1000 PPM.

After the above problems have been solved, then the Simple Solution For a Complex Problem would be as follows:

I: Require all states to conform precisely to the federal rules and to be no less or no more stringent. This will create fair competition and minimize the activity of law breakers,encouraged now by different state laws.

II: Requirements For Generators, Transporters, Facilities And Burners.

(A) GENERATORS:

(1) The same as South Carolina's R.61-79 regulations amended January, 1986 with two exceptions.

(a) Do not call recyclable used oil a "hazardous waste".

(b) Do not enforce a strict 90 day storage rule, but establish a reasonable storage time rule based on the quantity generated in a given time.

(B) Transporters:

(1) Require EPA identification number.
(2) Require state permit.
(3) Require manifest on all shipments on a special used oil manifest as used in South Carolina.
(4) Require to file a copy of each manifest with the state monthly.
(5) Require to keep records and report quarterly to state.
(6) Allowed to store used oil at a transfer station for no more than ten (10) days.

(C) Used Oil Only Facilities:

(1) Require EPA identification number.
(2) Require state permit.
(3) Require Part A only of permit requirements.
(4) Require proposed 40 CFR Part 266, Subpart E, paragraph 266.43 with two exceptions:
  (a) Allow to accept no unmanifested shipments.
  (b) Manifest is to be special used oil manifest and not Uniform Hazardous Waste Manifest -- EPA Form 8700-22.

(D) Burners:

(1) Requirements of 40 CFR Part 266, Subpart E, already in place and no more.

III: Requirements For Anyone That Is Engaged in Both Hazardous Waste And Recyclable Used Oil Activities.

Anyone engaged in both activities should be required to meet all state and federal rules applicable to their hazardous waste activity.

Respectfully Submitted:

Ralph G. Higgins Jr.

Ralph G. Higgins, Jr.
Vice Pres. & Gen. Mgr.
Statewide Waste Oil & Chemical Corporation.
P.O. Box 5503--Spartanburg, S.C. 29304
(803) 439-9330

Mr. STENHOLM. Thank you, Mr. Higgins.

Next we have Mr. George T. Booth.

TESTIMONY OF GEORGE T. BOOTH III, PRESIDENT, BOOTH OIL CO., AND PRESIDENT, ASSOCIATION OF PETROLEUM RE-REFINERS

Mr. BOOTH. Good afternoon. I would like to make sure that my written testimony and attachments are entered into the record.

Mr. STENHOLM. All statements and testimony will be made a part of the record.

Mr. BOOTH. I had not previously submitted them.

My name is George Booth. I am here today representing the Association of Petroleum Re-Refiners which is a segment of the recycling industry that takes somewhat of a different viewpoint than some of the other members of the panel.

I also wear the hat as president of Booth Oil Co. and manager of business development and government affairs for the Breslube Group, which is our corporate parent which is the largest integrated re-refiner or one of the largest at least in North America processing and collecting over 20 million gallons per year in the northeastern United States and southern Canada.

We have a plant in Buffalo that was a family business that sold out recently to the Breslube Group. We are in New York and we are subject to very strict environmental regulations, including getting a permit under part 373, which is the State's equivalent to the full subtitle (c) regulations of RCRA, which means we are getting a part B as an oil re-refiner in the State.

The Association of Petroleum Re-Refiners represents those of us who recycle the used oil back into lubricating oil. By our estimates, there are approximately 150 million gallons of installed capacity, and I use installed capacity as opposed to what is being processed because economics and other factors have not allowed that entire capacity to be utilized.

Our industry group is willing, ready, and able to expand to handle ever-larger volumes of used oil given the right economic climate and the right environmental regulatory climate. We look forward to adoption of EPA regulations.

There are those in the investment community and those within the existing industry who have been waiting literally for years for adoption of a Federal system that would regulate the recycling of used oil or the general management of used oil.

In fact, in 1982, at a hearing in New York City, I believe it was the same subcommittee, Congressman Molinari held there in New York City, hearings that were quite different in content. At those hearings, I called for the listing of—I did as part of both our company and the Association of Petroleum Re-Refiners—I called for the listing of used oil as a hazardous waste at that time and, surprisingly, most of the other people in the room agreed with me.

It is amazing how time has a way of changing our perceptions. Obviously there are major issues that seem to be important today with the do-it-yourselfers problem and also the potential CERCLA liability.

I will address both of those.

My question to many of the collection sites that have said that they won't take the do-it-yourselfers oil anymore because of the regulations because they are afraid of getting contaminants, my question is why weren't you concerned before about getting those contaminants. If they were getting into the used oils, were they not in fact going to collectors and going down the line to be recycled in some form or another.

I guess our position is that we don't want those contaminants either as re-refiners, but I think the important point is that the collapse in crude prices and corresponding collapse in used oil pieces has resulted in that collectors are either paying or about to pay in all parts of the country, and I wouldn't accept it if I had to pay for it, but it is not the regulations causing that problem, it is the collapse in crude prices.

The arguments about potential CERCLA liability is something that we sympathize with the generator concerns. We endorse the proposed exclusion to exclude recycled oil from CERCLA liability which are, maybe, redundant, but I think it is very important that that exclusion doesn't create a loophole and that used oil should not be mixed with any hazardous wastes and that generators must be accountable to the degree that they make sure it is recycled in a manner that is consistent with EPA-promulgated regulations.

I would think that such an exclusion would eliminate most of the insurance, psychological, and also the compliance cost factors that are being cited as reasons for not wanting to remain in the oil change industry.

Another proposed regulatory is listing used oil as a hazardous waste only when disposed. I think this is a perception problem. It condones virtually all forms of recycling. Most people in the used oil management system view used oil as a harmless commodity, that merely to be reused ones, that that is the legitimate recycling activity. I think the PEA themselves admitted that there are always those that are looking for loopholes.

In fact, several years ago, there was a Federal Register concerning sham recycling where they set a Btu minimum for mixtures of used oil and hazardous waste. The problem with burning is if it doesn't smell up the neighborhood or smoke too much, supposedly I guess it is OK to burn.

Re-refining, on the other hand, has a finished market specification that it must meet. I question, also, why does illegal mixing continue today despite the fact that it is illegal.

The point is will there ever be any real change unless there is real change within the regulatory system? There are those that argue that the free market forces should choose the recycling option.

We agree, but we think that there needs to be something called environmental cost added to those recycling options that are less than environmentally sound.

I will take the liberty to quote from a long-time champion of environmental causes, and I apologize to Congressman Florio for using his words, but he spoke at one of our meetings several years ago and said it very well,

> Free market principles without any health or environmental considerations reward only those who can produce a product or provide a service at the lowest cost.

There simply will not be fair competition for hazardous waste management unless all forms of treatment and disposal are required to provide comparable protection of public health and the environment. Those firms that are willing to do things properly cannot continue to be undermined by a system that rewards the unscrupulous.

There are other arguments that have been put forth over the years since the adoption of many of the RCRA regulations. The most recent one relates to solvents. Solvents are used by the drycleaning industry.

There were arguments that the drycleaners would go out of business, that they would give back the solvent to you when you got your suit cleaned and those kinds of arguments.

I think that industry has a way of managing to adapt and they have done that and there is a segment of the solvent recycling industry that has moved in to take care of many of those problems.

The generators certainly have been the most vocal and adamant in their arguments against the proposed EPA regulations and listing. We are sympathetic.

I think that the CERCLA exclusion is an important factor that should eliminate most if not all of those arguments.

Let's face it, the costs of increased regulatory compliance are going to be passed on to you and me, the consumers.

Since an oil change generates approximately 1 gallon of oil per oil change, even $1 a gallon charge for disposal, which right now seems to be rather absurd, but perhaps there are those cases where that could occur is not something that would necessarily drive people away from having their oil changed.

The trend toward fast lube changing certainly shows that the American public is willing to pay for convenience a significant price over and above that what they might pay for doing it themselves. That is the segment that is lost to the fast lube segments.

I guess the most important thing that we have heard today and what we have heard at the hearings and what is going on is that perceptions are changing, that awareness is increasing.

Certainly I am happy to hear that the collectors of used oil are concerned about what is getting dumped into their used oil tanks.

I think it is about time and I think that accountability is something that is definitely needed in any kind of a management system. All forms of recycling need to be looked at with the same environmental scrutiny.

When all methods of recycling are required to provide the same protections for the public health and environment, then there will truly be competition on a sound and firm base.

What method will depend on the geographic area, the potential for markets and the management expertise and the investor expertise. Success will then depend on management's ability to be efficient and capable just as any other business venture.

Thank you.

[Mr. Booth's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF GEORGE T. BOOTH III, PRESIDENT, BOOTH OIL CO., AND PRESIDENT, ASSOCIATION OF PETROLEUM RE-REFINERS

The Association of Petroleum Re-refiners (APR) is comprised of companies engaged in the re-refining of used oils for use as lubricants, as well as the recycling of these oils for other uses. Recently published proposals by the Environmental Protection Agency (EPA) relating to used oil have sparked a lively debate as to the impact and the need for regulation of the used oil management (UOM) system. The re-refiners have chosen to largely support most of the EPA proposals as will be explained.

The re-refining industry currently consists of an installed re-refining capacity of about 150 million gallons of used oil throughput per year. This capacity could increase to approximately 300 million gallons by the end of 1987 and double to 600 million by the end of 1989 with the appropiate financial incentives. Certain participants of the investment community as well as existing re-refiners hold high expectations that the proposed regulations would have a very positive effect on the industry, thus affording the opportunities to expand. This capacity increase would allow most of the used oil generated in the United States to be handled in an efficient and environmentally acceptable manner to be used over and over again. Since oil never wears out - it just gets dirty - re-refining back to lubricant quality allows this valuble resource to be endlessly recycled and at the same time eliminates a potentially hazardous waste, used oil. This activity conserves a valuable natural resource and reduces the country's dependence on foreign oil imports.

There appear to be two major issues that are worthy of special discussion: the impact on "do it yourselfers" (DIY) and the impact of potential CERCLA (Superfund) liability on used oil generators.

There has been much said at both the public hearings and in the written comments about the problems of listing used oil as a hazardous waste. It has been stated that the oil change industry might stop doing oil changes and would most certainly stop taking the DIY used oil, thus increasing the liklyhood of more oil entering the environment from the DIY improperly disposing of his used oil. This in turn has been touted as being contrary to the Congressionly mandated law that recycling of used oils was to be encouraged. The APR would like to point out several facts.

1. A recent DOE study showed that less than 14% of the DIY used oil generated went to recycling.

2. Market studies have shown that the increase in the "fast lube" change industry has resulted in a decrease in DIY oil changing.

3. The collapse in world crude prices has had far more impact on a used oil collection facility's decision on whether or not to accept the DIY used oil.

These seemingly unrelated facts show that the issue is at best a moot point. The fact that only 14% of the DIY used oil was being recycled indicates that most efforts to recover this oil have largely been unsuccessful. More important is the fact that the trend has been away from the DIY oil changes to the new, more convenient "fast lube change" industry which for the most part properly handles its used oil and will be further encouraged to do so under the proposed management standards. This trend also points out a degree of price inelasticity in the oil change industry. DIY have made conscious decisions to pay significantly higher prices for an oil change at a "fast lube" facility. This would indicate that certain across the board increases in the price of an oil change would not automaticaliy drive the oil change business back to the DIY market. Finally, although regulation is being touted as the reason for a collection facility's reluctance to handle DIY used oil, the facts are that the collapse of world crude prices has caused a corresponding price collapse of used oil. Oil generators are paying in some parts of the country to have their used oil picked up. It is obvious that this is more of a deterrent to the local gas station owner than even regulation.

It would seem that to best handle the DIY sector that there needs to be some regulatory scheme that would discourage improper disposal of their used oil or would encourage them to have their oil changed at a proper facility within the regulated system.

The issue of CERCLA liability on the used oil generators, particularly the facilities that change oil commercially is an impoortant one that bears some discussion. The APR agrees with the EPA's analysis that much of the concern may be more perception than reality. However, it is important to note that, unfortunately, many business decisions are based on these kind of factors. The listing of used oil as a hazardous waste with a corresponding Congressionally approved CERCLA exclusion for used oil that is properly managed according to EPA promulgated rules would prove to be a powerful incentive for used oil generators to make sure that their used oil is going to properly managed facilities. This in turn would negate many, if not all of the arguments that have been put forth against the listing of used oil as a hazardous waste.

Just listing used oil destined for disposal as a hazardous waste creates a system that condones just about all forms of potential recycling activities, whether or not they are environmentally sound. By listing only when disposed of takes away the potentially very heavy hammer of enforcement for improper recycling activities, which were the focus of Congressional concern in the original Used Oil Recycling Act of 1980 and the subsequent Hazardous and Solid Waste Amendments of 1984. The current RCRA regulatory system exempts recycling but still presumably prohibits the mixing of hazardous wastes with used oil. Yet it is these very practices that occur with alarming regularity that caused Congress to attempt to force the Agency to move on used oil regulations, so as to discourage unsound recycling practices. The APA,s conclusion is that if used oil is listed as a hazardous waste only when disposed with only special management standards regulating recycling, the used oil management system will not change and the much needed enforcement to prevent mismanagement of used oil will not occur.

We would find it hard to believe that anyone will be able to cite specifically that there will be a defined incremental cost increase in insurance if used oil is listed as a hazardous waste. However we are sure that there will be those that will make such claims. We sould argue that with the current insurance liability crisis with ever inflating premiums and exclusions being added, that listing used oil as a hazardous waste will have minimal impact in reality but will merely be added to the list of excuses that the insurance industry uses to justify their current positioning. Futhermore, insurance for the recycling industry today is difficult to obtain and when available is expensive with lower coverage and more exclusions. For many years the oil recycling industry has been considered a higher than average risk becuase of the nature of the material being handled and the potential for claims. For example, used oil is routinely heated above its flash point in processing thus posing a "hazard". There is also potential for spills, thus creating a pollution hazard regardless of whether it is used or virgin oil or whether or not it is a listed hazardous waste. The APR's conclusion is that listing used oil as a hazardous waste will have minimal impact on the availability or the costs of insurance for used oil management facilities. If the listing also has the Congressional exclusion from CERCLA, in all likelyhood there would be no impact.

Perception of participants in the used oil management system have about their liabilities in handling used oil is an important question. It is perhaps the key issue as far as we can see. Today, under current regulations, participants see used oil as a harmless commodity with a positive value and hence no need for any regulation or changes to the current system.

Various recycling options need only be successful by the fact that the product is re-used once, such as road oiling. The hazards of this practice are well documented, but hazards from other options such as improper burning are less visible; ie. some feel that if it burns and doesn't smell up the neighborhood and doesn't visibly smoke too much it is a viable recycling option.

Certainly, management standards only would help, but the listing as a hazardous waste will be the only way to stop the "perception" problem that most handlers of used oil have. By EPA's own admission in the form of a Federal Register notice about "sham" recycling, there are always those that look for loopholes and there are also those that unknowingly participate in improper recycling. This is especially true in the case of used oil burning. Generators, collectors (transporters), processors, fuel blenders, and burners generally have no incentive to test nor do they particularlly care what is mixed with the used oil as long as it can be burned. Current regulations already prohibit illegal mixing, but mixing is widespread despite this RCRA prohibition. The APA feels that because of the inherent nature of a used oil management system that views any form of recycling as legal disposition of the used oil to be the reason behind many of the abuses. There is no incentive to do anything else. The perception is that it is harmless. There is no accountability and management standards without accountability in the form of a hazardous waste listing will do little to change current practices.

The public outcry over the proposed listing goes far in supporting our argument that change will occur if used oil is listed as a hazardous waste. There will be accountability in the system. Burners, processors and transporters will test and do ongoing monitoring to make sure that they are properly handling used oil and that no illegal mixing has occurred.

Awareness that they are handling a hazardous waste will certainly change the perception of used oil and will be a positive step in promoting an environmentally sound used oil management system.

The greatest impact on burners of used oil will not be when used oil is listed as a hazardous waste but will be when the Phase II burning regulations are promulgated. Nearly everyone expects changes in the used oil management system. Blenders and processors of used oil for fuel will in all likellyhood attempt to market a specification fuel which for all intents and purposes, would be outside of RCRA regulations. It seems clear that this is really what the EPA intended and the APA has no problem with that as long as meeting specification is not so easy so as to creaote a gaping "loophole" as exists now. By marketing "spec" fuel, the processor doesn't even have to tell the burner that used oil is mixed with their fuel thus allowing it to be sold with only slight discounts, if any. The sale of "off spec" fuel might be more limited, requiring larger discounts because of higher costs associated with environmental compliance. But, a dedicated marketer of "off-spec" fuel will assist the burners in complying, perhaps even supplying a "boiler plate" plan that could be implemented to meet the RCRA regulations. There is no doubt that there will be economic changes within the used oil management system. It will take time to sort out where the costs will be borne, but we assure the regulators that the system will work with perhaps only some short term disruptions.

The impact on the oil change industry is another important factor to be considered. It is this segment of the used oil management system that has been perhaps the most vocal and adamant about the effects that listing will have on them. While it is true that the implications of Superfund liability could be an important factor, it is unlikely to create a mass exodous from the oil change business. A Congressional exclusion for properly recycled used oil would alleviate many of these concerns and would provide an incentive for these generators to make sure that their used oil is properly recycled. Of course, without such an exclusion, there would continue to be a strong incentive to make sure that the used oil was only given to or disposed of to a bonafide, permitted transporter to be taken to a well managed and legitimate recycler.

Our previous discussion of the proliferation of "fast lube" change facilities at the expense of the DIY segment shows that the increased cost of compliance when passed on to the consumer in terms of a price increase would not effect the volume of oil changes performed. Since one oil change yields approximatelly one gallon of used oil, even a more than a dollar per gallon disposal cost increase would not significantlly change the economics of the industry. This is especially true since the increased costs would be shouldered by the entire industry and all commercial oil change facilities could elect to raise their prices to cover the additional costs. As with most environmental improvements, it is the consumer who bears most of the costs, albeit in this case, only a few dollars a year. This seems only a small cost in terms of the environmental advantages.

It is difficult for the APA to answer the questions concerning the impact on recycling in states that have special rules governing used oil. Our memberships' experience in the states that are mentioned is that there has been little discernable impact on the industry. There are instances such as in New York, where collection has consolidated, since the high costs of testing, permitting and other compliance factors have made the economics of scale shift to larger firms. Another factor that could be cited is that neighboring states with little, if any, regulation might get a greater flow of used oil and that there might be more incidents of uncontrolled recycling practices such as road oiling. If anything, this supports the need for uniform, Federal regulations to prevent these inequities.

As an Association, we feel that it is important to have state delegation of the management standards and potential criminal enforcement to better implement and enforce the regulations.

In summary, the APA continues to support the listing of used oil as a hazardous waste coupled with the stringent management standards for all segments of the used oil management industry. This scenario, coupled with the exclusion of used oil from CERCLA when properly recycled and not mixed with any other hazardous waste should do much to help prevent the ongoing abuses within the system that have resulted in many of the publicized Superfund violations

Booth: 'Regulate Waste Oil Management'

U.S. Needs Responsible Recycling of Lubes

GEORGE BOOTH III
APR President

By George Booth III

THE ASSOCIATION of Petroleum Re-refiners (APR) comprises companies engaged in the re-refining of used oils for use as lubricants, as well as the recycling of these oils for other uses. Recently published proposals by the Environmental Protection Agency relating to used oil have sparked a lively debate as to the impact and the need for regulation of the used oil management (UOM) system. The re-refiners have chosen to largely support most of the EPA proposals.

GEORGE Booth III is president of the Washington, D.C., based Association of Petroleum Re-Refiners, which represents companies engaged in the re-refining of used oils for use as lubricants, as well as the recycling of these oils for other uses.

The re-refining industry currently consists of an installed re-refining capacity of about 150 million gallons of used oil throughput per year. This capacity could increase to approximately 300 million gallons by the end of 1987, and double again to 600 million by the end of 1989 with the appropriate financial incentives. Certain participants of the investment community as well as existing re-refiners hold high expectations that the proposed regulations would have a very positive effect on the industry, thus affording the opportunities to expand.

This capacity increase would allow most of the used oil generated in the United States to be handled in an efficient and environmentally acceptable manner, to be used over and over again. Since oil never wears out — it just gets dirty — re-refining back to lubricant quality allows this valuable resource to be endlessly recycled and at the same time eliminates a potentially hazardous waste, used oil. This activity conserves a valuable natural resource and reduces the country's dependence on foreign oil imports.

Re-refiners are expected to and are willing to accept used oil and process it in a manner consistent with the protection of human health and the environment. While the APR shares many of the concerns of the used oil generators, ie., that the EPA's proposals will cause undue hardships, they still feel that it is the generator's responsibility to ensure that the used oil is not mixed with other haxardous wastes and that the used oil enters the recycling system to be handled in an environmentally sound way.

Since listing used oil as a hazardous waste invokes potential CERCLA liability, one possible compromise is a proposed congressional amendment that would exclude generators as long as they made sure that the used oil that they generated went to EPA-permitted recyclers operating within the promulgated management standards. Accountability is hard to assess and the EPA themselves have cited many of the abuses and mismanagement within the UOM system without necessarily pointing the finger at any one segment.

It is at best a difficult problem that demands a solution that will change the way everyone views used oil.

Used oil has traditionally been perceived as a "harmless commodity" with a positive economic value by most handlers within the UOM system. Private individuals who change their own oil often view used oil as a waste product much like garbage. As a result of these perceptions there is a firmly held belief that there is no need for regulations or change within the UOM system. Highly visible evidence such as the Times Beach, Mo., road oiling incident and the fact that there are many former used oil facilities on the Superfund list point out the fallacy of this perception and the need for change.

Used Oil Contaminants

The EPA determined that used oil typically and frequently contains significant quantities of lead and other metals, chlorinated solvents, toulene, and napthelene which could prove a substantial hazard, if improperly managed.

As a result, the agency proposed to list used oil as a RCRA hazardous waste. This listing of used oil will allow the EPA to control the treatment and disposal of used oil, as well as the transportation, accumulation and storage prior to treatment or disposal.

Regulations have also been proposed for management standards that were specially developed for recycled oil. Promulagation of these standards coupled with the listing of used oil as a hazardous waste will provide the EPA with the tools to allow for effective administration and enforcement of a regulatory system for the management of used oil.

The APR agrees with the EPA that participants of the used oil industry should be responsible for the disposition of their used oil in an environmentally accpetable manner and should be held

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Environmentally Safe Recycling Needed

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accountable for their actions.

Product Specifications

Historically, re-refiners have been subject to the product specifications of the marketplace for their primary product, lubricating oil, which requires it to be contaminant free. As a result, re-refiners have adopted strict final product specifications that produce environmentally acceptable products.

This compares to some other recycling options where as long as the used oil contains adequate BTUs, doesn't smell up the neighborhood and doesn't visibly smoke too much, the product is considered fine.

The incentive to test and to reject mismanaged used oil that may have been mixed with other wastes is very high for the re-refiner and less so with other recycling options. Unfortunately, perhaps, but as with other hazardous wastes the least expensive option is often the one chosen, such as landfilling over treatment. Until there are forced environmental costs, management practices will not necessarily choose the best environmental options.

New Technology

There are other reasons for this support of the proposals. Most re-refiners are using new technology and have modern, capital intensive facilities in operation. This technology and these facilities enable re-refiners to produce useful products in an environmentally acceptable way. A uniform Federal regulatory system would force equal environmental compliance costs on all participants, regardless of location, technology or process. This certainly is fair.

The APR and the re-refining industry supports responsible and environmentally acceptable management standards for used oil.

The recycling industry and society will benefit from the proposed listing as a hazardous waste and the standards for the management of recycled oil. Not only will a valuable resource be conserved and reused but human health and the environment will be protected.

Mr. STENHOLM. Thank you Mr. Booth.
Mr. Case.

TESTIMONY OF C. WAYNE CASE, GENERAL COUNSEL, RADIUM PETROLEUM CO.

Mr. CASE. Thank you, Mr. Chairman.

In lieu of reading my comments that I ask be put into the record, I would like to state a little more history about our company. We have been indicated to be the largest collector and processor of used oil in the United States and so we had just as well take that mantle.

We operate facilities in 14 States and collect in 23 States with approximately 50 employees, 85 short trucks and 35 transports and we pick up in excess of 600,000 gallons per week of used oil, which is a lot of oil if you consider the total amount being generated.

At this point in time, we have a problem. We cannot sell our oil. We can't sell it because of the impressions that are being made in the used oil business that the asphalt plants will have a controlled substance on their site by May 29, 1986 when the lead limits will change.

Our oil is running about 240 to 400 parts per million which makes it specification fuel today, but May 29, what do you say to the customer with 1 million gallons of storage on his site that if you don't burn it all you should have notified EPA with a filing and by the way, you have an off-spec fuel which may well, by November, be a listed RCRA waste. They are not buying from us.

Eighty-five percent of our customers have refused to buy our fuel. It is tested. I have a lab setting in Kansas City with $400,000 worth of lab equipment and chemists to run tests on the oil, with every piece of equipment you can get on the open market.

We check our oil and we try to weed out the improper disposal of material into that oil. You talk about oil being contaminated with hazardous waste, and if you look at what we are talking about on 1,000 parts per million, and if Mr. Higgins' calculations are correct, that is 1.37 gallons in a 2,000-gallon load that equals that 1,000 parts per million.

If you are out collecting from as many customers as we do, which is about 100,000 customers, it is not hard to see that a customer we pick up 15 gallons from might contaminate a whole load and how do you check each customer on a day's route.

We are in a real quandary at this point in time with 12 million gallons in storage of specification fuel oil which shortly will become off-spec.

In order to sell that fuel after May 29, 1986, we will have to blend, which means in order to blend that fuel to specifications, we have to go on to the open market and buy No. 6 fuel oil which in the Midwest is not being manufactured by APEX or any others.

At the same time, how do I become competitive in the open market when I am blending 4 to 1 and I can't sell it today? It is an impossible task for us and we are looking for relief at this time.

We have a very critical decision to make within the next 60 days. We are close to capacity and in some States we are charging 50 cents a gallon to offset our costs, but when it comes down to it, it doesn't make a difference what we charge, pretty soon we will have no place to go with it and no storage capacity.

We will not take on other peoples' problems so within the next 60 days we have to decide whether to park those trucks and let the people go and wait until the regulations calm down and until the regulated community can determine where EPA is going.

The big fuel blenders that we used to sell to, they don't buy from us now. They are scared of where EPA is going with it and the definitions of it and the problems with insurance.

I don't know whether EPA realizes that once they stick the designation of hazardous waste on this particular product, your DOT regulation will take the transports up to $5 million coverage.

I don't know how many have tried to get coverage these days, but it is impossible.

Tomorrow, I am attending a conference with the National Solid Waste Management Corp. in their attempts to form a new insurance company. We have $375,000 per year, not including the participation fees and everything else. We have to have that or our general liability carriers are saying, "We will not insure you, we will cancel your insurance," and we have been so notified by our general liability carrier.

We have also been notified, and when you talk about just the minor day-to-day operations our parent company is in the refuse hauling and disposal business. Our big liability carrier there has said, "Either you have pollution coverage or we are canceling your insurance in 30 days."

When you talk to them about what the problem is, they say there is the potential of pollution from your commercial or your residential hauls. They don't want anything to do with us. We have a real problem in what EPA is doing with the regulations.

We are from the State of Missouri with our primary facility that has used oil controlled by the State. We have no problems with those regulations. We have no problems with the manifests and the log system and the generator ID numbers and the testing requirements there, but unlike EPA, Missouri, once it has been recycled at a resource recovery facility which ours is permitted, they no longer stick the stigma of a controlled waste on it.

And all I am saying today is that we need some help or we will be put in a position of shutting down those trucks and I don't know, maybe our competitors would love to have those 100,000 customers, but from what we hear, our competitors don't have room or capacity either, and they are the ones that are changing and calling us asking us to buy them out and we are not doing so.

Thank you.

[Mr. Case's prepared statement follows:]

PREPARED STATEMENT OF C. WAYNE CASE, GENERAL COUNSEL, RADIUM PETROLEUM CO.

Our company is looking forward to the hearing by your committee on May 19, 1986, on the subject matter of "Used and Recycled Oil". The impact and ramifications of the proposed United States Environmental Protection Agency (EPA) regulations on used/recycled oil, has been felt by our company throughout the fourteen state mid-central part of the United States. These proposed regulations, when coupled with the general economic conditions in the crude oil market, have created an almost impossible marketing climate for our recycled used fuel oil.

Since EPA announced its intention to regulate used/recycled oil as a RCRA waste stream, the market for our product (even specification used fuel oil) has been reduced by eighty-five (85%) percent. Our company collects in excess of 600,000 gallons of used oil each week using one hundred fifty (150) employees, eighty-five (85) short trucks and thirty-five (35) tractor-trailer units. The problem facing us, is our normal markets are not purchasing the recycled oil at any price. By markets, we mean large industrial fuel blenders, kitty litter manufacturers, by-products manufacturers, asphalt plants, and other industrial burners of heavy No. six (6) fuel oil.

At the current time, our company has in excess of twelve (12) million gallons of recycled oil in storage which meets the definition of specification fuel oil, except for the "lead" content. If EPA holds to its proposal deadline of May 29, 1986, the regulation on 100 ppm of lead will become the standard across the United States. Our company cannot sell its supply of used/recycled oil at any competitive price now, with the content of lead averaging 250 - 400 ppm, so there is no way economically for us to purchase new cutter stock (No. 6 fuel) and blend to the 100 ppm regulation level. The problem is further compounded by the lack of a large fuel refinery in the mid-central states which is manufacturing new No. 6 fuel oil in any quantity.

In addition to the above fact, a majority of our major customers will not and have not purchased fuel from us because of the fear of the regulation changes coming on May 29, 1986, and in November of 1986. A recycled fuel product, which is a specification fuel now and has been since March 29, 1986, will become an off-specification fuel because of the lead requirement on May 29, 1986. None of our customers with large fuel tank storage capacity are willing to risk the presence of regulated fuel in their storage tanks after May 29, 1986. They would then be required to notify U.S. EPA of their burning activities, etc. Compounding this problem further, is the issue of what company wants to have a product on its site that in November of 1986 will become a hazardous waste?

The hazardous waste designation is an absolute stigma for recycled oil products. Our own insurance carriers are refusing to write the recycling facilities and the transportation fleet, and when a customer's insurance carrier is advised that its insured will have a hazardous waste oil on site, the carriers reactions are predictable. With the right-to-know regulations of OSHA, the proposed CERCLA provisions now being considered, the storage and management regulations being proposed, and the normal fear of becoming involved in the environmental regulatory process, our customer base declined substantially. All of the before mentioned items cannot be overcome by the opportunity to purchase fuel oil at a price a few cents below that of new fuel oil.

In a effort to try and stay in the used oil recycling business until the regulations have settled down, and the regulated community has had the opportunity to fully assess the impact thereof, our company has been forced to move from paying an average of twenty-five ($.25) cents per gallon, to charging fifty ($.50) cents per gallon in some locations. This change in pricing structure still will not solve our industries' problem, if we cannot sell the product to burners of heavy fuel oil.

The impact of the proposed regulations has been miscalculated by United States EPA, and its assumption that only one-half of the regulated commodity will survive the regulatory process implementation is underestimated. EPA assumes in its comments to the November 9, 1985 regulations on burning of used/recycled oil for non-industrial burners that eighty (80%) percent of the used oil collected in the United States by May 29, 1986, will meet the 100 ppm lead level content. This has not been the case and, in fact, the lead content still remains at the 250 - 400 ppm level in all of our locations. It is falling and undoubtedly will eventaully hit the 100 ppm limit called for in the regulations, but here again it is a matter of timing. Companies must be in business in order to collect, process, and sell recycled used oil. At this time, unless the May 29, 1986, level on lead is postponed for six (6) months, or the level re-set at 400 ppm until December 31, 1986, and then set for 100 ppm in May of 1987, our company will be placed in the difficult position of seriously considering the total withdrawing from the marketplace until the price of crude oil changes substantially. This decision could have serious ramifications withthe 100.000 plus customers serviced by our company.

The industry welcomes regulations on the storage, transportation, recycling, and disposal of used oil. We do not disagree with EPA's proposals to regulate the initial collection, transportation and storage activities, but do not tie the finished recycled fuel oil products to the RCRA and CERCLA provisions. The by-products of the recycling activities (sludge) should be managed to properly assure disposal in an environmentally safe manner. I personally disagree that it should be made a hazardous waste, requiring a manifest and disposal at an approved TSD facility.

In conclusion, we have no objections to regulation of the nature enforced by the Missouri Department of Natural Resources, but our industry cannot have the stigma of the finished product tagged with the name "hazardous waste" or the CERCLA enforcement ramifications.

I appreciate your time, your attention and hopefully some relief.

Sincerely,

C. Wayne Case

C. Wayne Case
General Counsel

CWC:ew

Mr. STENHOLM. Thank you, Mr. Case.

Mrs. Long.

Mrs. LONG. Thank you, Mr. Chairman.

One hardly knows what to say after such depressing testimony. For your industry as a whole—are more people entering this line of business or are bankruptcies occurring? What is the general state of the recycling business?

Mr. HIGGINS. There are two facilities very close to me in North and South Carolina. Neither of them are oil facilities. One of them is an incinerator. Another is a reclaimer of solvents, both permitted and regulated as hazardous waste facilities, well managed, frequently inspected, but they are being forced to close because they cannot afford the liability insurance. They are small operators.

We're small business people and if we get much smaller you won't find us because of forced closures. We don't have enough incinerator capacity in the area now.

We don't have enough solvent reclaiming capacity in the area now, but two of them right now are being forced to close. One other facility that was a part used oil facility and part hazardous waste disposal, GFX Corp. has closed the used oil operation voluntarily. They still have a big landfill, they have plenty other business interests, and when they saw these oil regulations coming, they closed the door on a cat litter operation in which they used the oil to heat the cat litter operation and it was used as an energy source. They just closed.

Mr. BOOTH. Our segment of the recycling industry is actually—there is some expansion going on right now, there is a plant under construction in San Francisco, there has been another announcement of the same corporate parent building a plant in Los Angeles, and our own position is to reopen our plant in Buffalo and expand that, and largely a result of the pending regulations and what we see as some of the structural changes within the used oil management system, which will allow us to be able to operate economically.

Our corporation is ready, willing, and able to continue to expand in the United States as regulations become finalized.

Mrs. LONG. Is that true even if the EPA regulation is the rule that prevails on hazardous waste?

Mr. BOOTH. What I am saying is that we support that regulation.

Mr. NOLAN. May I add to the discussion?

No doubt you have picked up that there are two different industries represented here at the table. There is recycling of oil into fuel and there is re-refining into lube oil. With all due respect to Mr. Booth who is from the re-refining business, he is telling you that if the charge for disposal gets high enough, if the re-refiners can charge enough to generators, then they can operate profitably.

Mr. Booth is saying that and he is ready to reopen his plant, which has been closed for some time, bought out by another operator in Canada. But let me repeat what I mentioned earlier about good options, Mr. Chairman. Lots of good options are available if we can charge enough to the generator, but the question is, what is going to happen to used oil if the disposal price gets up to where it is now for other hazardous wastes?

We have already had the discussion of what is going to happen. People will go out of business, used oil will simply be more do-it-yourselfer and dumping.

So when you asked the question what is happening in the industry, you have to recognize that you are speaking to different segments of the industry:

The re-refiners—I think there are something like a half a dozen in business in the United States. I would doubt that there are four operating profitably; and recyclers of which there are hundreds who are producing fuel.

Now, granted it might be an ideal situation for the environment if everybody could be persuaded to pay $2 or $3 a gallon to dispose of used oil so that it could be re-refined in a very expensive recycling process and turned into a virgin oil equivalent, and done perpetually, but that is definitely a restructuring of the recycling industry. It is not at all what was contemplated in EPA's regulatory impact analysis.

If that is the direction that we are to go, and if that restructuring of the industry is to be the assumption on which these regulations are based, then it ought to come out in the open, a new regulatory impact analysis which declares that EPA intends to restructure the recycling industry, at great cost to generators.

Mr. BOOTH. I was saying that adequate supply is probably the most important function of our business and there is absolutely no reason that we would need to get $2 or $3, but there does need to be a realistic economic analysis.

If the price of crude went back up again, the analysis is what is the average selling price of the finished products versus your average cost of getting the oil into the plants, and if you track that, you would find that it followed almost exactly the price of crude over time and that $2 or $3 a gallon is an implication that is absolutely false.

It is strictly a margin question, and adequate supply to run the plants as near to capacity as possible to cover all the fixed costs such as insurance, and by the way, we pay close to half a million dollars a year on insurance.

GSX is affiliated with many operations across the United States as well as plants in Canada.

Mr. HIGGINS. I would like to make two comments. I am in possession of an EPA report published in August 1974, and it may be of interest to you to know, that this report states that there were once 150 re-refiners in the United States. By 1974 there were fewer than 40 re-refiners.

Today, as Mr. John Nolan says, there are about half a dozen and I am informed that there are only a total of 11 on the North American continent. There has to be a reason why they went out of business.

We have been in the business of recycling oil for fuel for over 12 years. We were doing it before South Carolina even dreamed of regulating it and we have found that the price changes of crude, crude going up and down, is something we can cope with. Everything is relative in business.

When you get as white-headed as I am, you have fought prices before. Price is a major concern to us. We can always compete. We can adjust our business to compete just like everybody else in the world does on every other product in the world. We are no different.

Good businessmen are good businessmen wherever you find them. So, we are not so concerned about what is happening to crude oil prices. We are concerned about two things. We say that unrealistic regulations are in place now. We don't want hazardous, waste in oil, we want nothing to do with it.

First of all, it is poor fuel. It degrades our product, it hurts our quality. We don't want it. Do delineate, but delineate sensibly.

We don't object to being regulated. This should be. Make us tow the line. Help us help you is our message, but leave the generator and the voluntary solution to all pollution, the burner—voluntary, underscored three times—alone. He is a voluntary participant and he is the solution. He does have other alternatives. Once you have regulated us properly and we are easy to regulate because we are sitting ducks, we don't move—regulate the fool out of us, make us do it right, then why is further regulation of generators and burners needed?

We want to help drive the shoe clerks and law breakers out of the business, too. We don't like them either, but if you regulate generators and burners, as EPA proposes, recyclers will be out of business and re-refining companies cannot gear up to prevent the pollution that will be created in this country. They haven't in the past and I don't believe they can in the future. Re-refiners are decreasing, not growing.

I may be living in an old fool's paradise, but I don't think I am.

Mr. **Nolan**. When you get down to an industry that has only a half a dozen plants in the United States, you must remember that used oil doesn't operate like new oil, there were no tankers bringing in used oil.

It comes in 55-gallon drums all over the country, coextensive with the population because it comes out of everyone's car. There are asphalt plants for paving roads in every county in the country, and that is why burning in asphalt plants has become one of the more popular and environmentally safe ways of doing it.

It should not be imagined that the stuff goes out to the asphalt plant and spews pollutants all over the place. Most of the plants are equipped with bag houses, and they comply with air quality standards where they operate, but there is a big difference between picking up oil at the local Texaco station, driving it miles to a plant, and 15 miles to deliver it to an asphalt plant, between that and driving all the oil in the country to the half-dozen re-refining plants that exist.

Imagine the expense that is involved in collecting that oil, driving it across three, four States to get to a re-refiner. They are very willing, given the proper incentives, I don't care what the price is, it simply is more money.

More money will cause more plants to open in more places. Right now, there are less than a half a dozen in operation in the United States. That is not a realistic option at this time.

Mr. **Konnick**. Under the current regulations, as they exist in our immediate area, I know of at least two facilities that reprocessed oil that are no longer reprocessing oil, and therefore marketing it.

The regulations as they currently exist have looked to their demise, and the demise of some small collection organizations, the mom-and-pops.

Petrocon has received an influx of calls for additional collection. We cannot service those calls, primarily because we are not sure we can market the product, even if it would be on-specification, collectable material, as far as Pennsylvania is concerned.

Mrs. **Long**. Just one other question. Mr. Higgins, you have lost some important customers. Have you found replacements for those customers?

Mr. **Higgins**. No, ma'am; would you like some of the remarks I get? I am serious, and not trying to be a smart alec. I had one guy who said, they call it hazardous waste and say it is all right to burn it. What are they going to say next week, next year?

I have one who said to me, they must have had a reason to call it hazardous waste, I don't care what you or your test results say, I wouldn't burn it if you gave it to me.

Those are factual remarks I have gotten. I find it impossible to do business this way. The State of South Carolina, lists only four burners of used oil fuel in the whole State. The State no longer burns it, themselves.

When the State let the contract to pick up their used oil this year, for the first time, they dropped the reciprocity arrangement to repurchase. EPA proposed and in place regulations scared the State of South Carolina, and they have stopped burning used oil fuel.

Of the four burners of used oil fuel listed in South Carolina, two are incinerators. One was a Pinewood operation, just closed, and the other one is my parent company, an aluminum foundry.

Other than our parent company, every other drop of oil I have sold, for the last 4 years I had to sell out of State in North Carolina, and I go as far as Tennessee trying to move oil. I am an island, bordered by the Atlantic Ocean and three nonregulated States.

I have fought for survival, and I pray that the U.S. Government won't call recyclable used oil a hazardous waste, because if you don't, then I will have a chance to educate those dumb South Carolinians back home.

There is one other thing you might be interested in, Mr. Combest, your question a while ago about a test, I think your question was: Is there a test that a driver can run at the time oil is picked up to determine whether this oil is hazardous or not?

Mr. COMBEST. That was going to be my question I was going to ask you. I was getting at the fact, what was the standard procedure, if every load that came off was normal?

Mr. HIGGINS. Every load must be tested in South Carolina, and there has been no quick, simple, accurate test provided. It has required much ingenuity. I have a quick test. It is not an approved test. I have had to come up with something for survival's sake. I would also like to comment that labeling oil cans to encourage recycling is a good first step, but we need a lot more than that, because I have not seen anybody reading oil cans lately, that already have this message on the can.

I know I am getting off the subject, and I am going to hush.

Mr. CASE. One of the other things is the U.S. Government generated used oil at all of its facilities. We were contacted 3 weeks ago by a facility down in Georgia who had 4 million gallons of oil on the military base, and wanted a bid from us as to what we would pay them for their oil.

We very nicely replied, pay you? What are you going to pay to us to move it? They said, wait a minute, that is not in our budget, to pay for the removal of this oil, and they said, that had been the comments they had received from all of our other competitors, if we are not paying for oil these days, what is the military going to pay us to move that oil?

I believe they still have that in storage, and are still looking for a place to move it. If the new regulations go into place, I assume there is a 90-day rule that might apply to some of the military operations, the motor pools, the normal regular governmental affairs, and it will be interesting to see what they do with their own oil, and how they propose to get rid of it.

On the other hand, we had a big customer in the State of Iowa who normally bought about 4 million gallons of oil from us for their asphalt plants.

In looking at the specification fuel oil requirements, they went to the State and said, they have mobile plants, nonpayment areas, attainment areas, what is it going to take for us to burn used oil and meet the specifications, and they were advised that the original permits did not provide for used oil, and they would have to run tests on each plant in order to be able to burn that specification oil.

Of course, we have not sold those people any oil whatsoever this year, and they were a big, big customer of ours, and I don't blame them, because it is my understanding from talking to some of the asphalt people, that it is about a $25,000 test to determine it, and they move them from place to place.

When that plant moves on a construction, it is another area, another stack test. They won't buy it.

Mr. HIGGINS. Oftentimes, an asphalt plant is mobile and it is put on leased property. They don't own the property they operate on, during the job, or on this section of the road, and therefore, under EPA proposed regulations these plants will have insurance problems.

Most of them will not consider used oil fuel. I think you will hear this later. I see a young lady that we know, Kathryn Gunkel, I think she will educate us on this fact.

Mr. CASE. I don't know who's had a chance to contact a TSD, a destruction facility for oil, and dirt contaminated with some appendix 8 constituent parts, but we had the luck to so do in trying to find a place to go out of region 7, which has no TSD facilities for 6 cubic yards of material. Our quote was $100 a 20-gallon drum, fiber packed, and that didn't include the cost of the testing, or the drum, or the transportation on the pelletizing.

That is a very, very heavy cost. They advised us it would be a year before they could get to us. They have that much backlog at the big facilities, if you can get one to fit you.

Mr. STENHOLM. Mr. Combest.

Mr. COMBEST. Those who are in the collecting business, do you go to a customer and pick up whatever oil they have, or do you, as the gentleman here this morning talked about, in their business, when they drain the oil, they keep it, to keep the integrity of it, do you have certain requirements from your customers?

Mr. NOLAN. We have now, and we particularly have had in the past, because we—the company I work for—are a hazardous waste transporter who haul waste paint thinner, and a used oil company. We have made it a policy with our customers, that in the paint waste they will put only paint waste, and in the used oil, they will put only used oil, and that is being enforced now with the burning and blending rules that exist.

We tell them what the service charge is to pick up the oil, and what other conditions apply regarding maintenance of segregation of waste, yes.

Mr. HIGGINS. Though our name is Statewide Waste Oil and Chemical Corp., which we are going to change, we are going to eliminate waste and chemical in our name. We are a waste-only facility, and always have been, but the stigma of just waste is beginning to upset us, and we are going to change the name.

To answer your question, there was a time when the generator dictated policy to us, because we needed what he had. Today, we can get more oil than we know what to do with. As a result of specifications of the December 9, 1985, 40 CFR 266, subparts (D) and (E), I published a three-page letter, explaining what was going on and the new policies I have to have, and ended that letter by saying, EPA demands that you keep it clean, and economics demand that you keep it dry. That is the bottom line.

Mr. COMBEST. What do you do with contaminated load?

Mr. HIGGINS. I have not had one since 1984, thank goodness. We run tests prior to loading or unloading all trucks at our plant. We developed a halogen test, it is not an approved test and few people know about it. It has worked effectively for me.

I have not had one contaminated load to contend with, but if someone does bring in one, they have just hauled hazardous waste, and the generator has broken the law because he doesn't have preauthorization to ship it, and the transporter does not have authorization to haul it. The only sensible course we have at our disposal, is to test a load before it ever gets unloaded from the truck.

We don't take a chance on one truckload messing up 20,000 to 30,000 gallons. We test before unloading. If we were to find a load hazardous, it certainly will go back to the generator and our new policy sets some pretty stiff fees for this. After all, the generator is responsible to know what he has.

Mr. COMBEST. It goes back to him, you mean to where you got it?

Mr. HIGGINS. Yes, sir.

Mr. COMBEST. You don't mix it, then?

Mr. HIGGINS. No, sir; I resent EPA's attitude that mixing is being done only by those people who collect the oil. It just simply isn't so. All I have seen has been mixed at the generator plants. The generators have worked off hazardous solvents in oil, and they have gotten away with it, and frankly, that is one of the few blessings of 40 CFR 266. It has given us a tool to stop that, and for that I am thankful.

Mr. STENHOLM. Thank you, gentlemen.

Mr. Booth, are you interested in bidding on that 4 million gallons of oil?

Mr. BOOTH. Bidding on it? The other way around.

Mr. STENHOLM. I am interested in the budget problem.

Mr. BOOTH. They can take it out of the budget surplus that they have, on the price of the fuel that they are paying for it, because they have saved money on that side.

Mr. STENHOLM. You are not too interested in that, paying for it, but you might be interested in them paying for you to take it?

Mr. BOOTH. It is a long haul.

Mr. HIGGINS. Do I read that as a qualified no?

Mr. STENHOLM. That is exactly what I heard.

I don't think I have any questions. Most of the ones I intended to ask have already been answered, and I thank you for your time and input to the hearing today. We appreciate your adding very much to the quality of this hearing, and our efforts to find some answers.

Thank you very much.

Mr. James Kimble, senior counsel, American Insurance Association, is our next witness.

TESTIMONY OF JAMES L. KIMBLE, SENIOR COUNSEL, AMERICAN INSURANCE ASSOCIATION, WASHINGTON, DC

Mr. KIMBLE. I am Jim Kimble, senior counsel with the American Insurance Association. The member companies of the association provide a majority of the commercial liability insurance being written in the United States.

I would like to begin by confirming the insurance-related concerns expressed by earlier witnesses today. Many of my clients characterize pollution liability exposures as uninsurable.

There are, perhaps, a handful of insurors in the United States still actively seeking policyholders to provide them with pollution liability insurance, but in those instances, it is extremely expensive.

My preliminary analysis—I must stress that—preliminary analysis of the situation, is perhaps even worse than that which has been articulated earlier today. If used or recycled oil is defined as hazardous under RCRA, there are perhaps three Federal laws which are severely impacted, or to put it another way, those entities will be severely impacted by three Federal laws.

First, the financial responsibility requirements in RCRA; second, the financial responsibility requirement of the Motor Carrier Act; and last, the liability system in CERCLA—all will attach to those entities.

Begin with RCRA. Some set of entities which would either treat, store, or dispose of used or recycled oil would be characterized as or defined as a facility under RCRA, and then would have to meet the responsibility requirements in that act.

I am not sure precisely what that set of entities would be. I am sure many used or recycled oil entities would be exempted, but I am convinced that, particularly as you move through the cycle of the entire recycling process, you pick up some entities which would be defined as facilities under RCRA, and would be subject to the financial responsibility requirements in that act.

Currently, that requirement would be to obtain as a minimum $8 million in liability coverage, $1 million per occurrence, $2 million in the aggregate for a sudden and accidental discharge, $3 million per occurrence, $6 million in the aggregate for a nonsudden discharge.

There are two insurance policies which must be acquired in order to meet those two standards. Neither of those policies is readily available today. The comprehensive general liability policy has been in effect for decades. It is the policy which responds to most of the liability of a business entity.

That policy has for years contained one narrow area of exposure for pollution, and that is if the discharge is both sudden and accidental.

The second policy is called the environmental impairment liability policy. That was birthed, if you will, in 1980, to respond to the final rule associated with the RCRA financial responsibility requirement, and that is for $6 million of coverage for a nonsudden exposure.

Neither of those coverages is readily available today. Very briefly, the why of it. It is the Superfund strict, joint and several liability system.

I would characterize it as not just strict but nearly absolute. There are only three defenses: Act of God, war, or an unrelated third party. So, in essence, the only defense you would have would be world war III, a hurricane, or a vandal who climbs a fence, turns on the spigot and gets caught.

So, it is an absolute liability system, and also a joint liability system, and both the jointness concept, and strict liability or nearly absolute liability concept are extremely difficult to insure.

The underwriting process relies on individual behavior. Both strict and joint liability, or nearly absolute liability ignores or renders meaningless individual behavior.

The situation gets worse from there. In August 1984, the *Jackson Township* case came down, and that case said, in essence, that the CGL policy which was designed to respond only to sudden and accidental events also must respond to nonsudden events. We have lost confidence in our own policy language, and no longer provide the sudden and accidental exposure in the CGL policy or the environmental impairment liability coverage, principally due to Superfund.

Finally, the Motor Carrier Act. There are three categories of damages in that act: Bodily injury, property damage, and what is known as environmental restoration. I believe that if you defined recycled or used oil as hazardous, then anyone who transported that oil would have to obtain at a minimum $5 million of insurance coverage.

That coverage is becoming more and more difficult to obtain because of the category of damages associated with environmental restoration. That term, as defined by the Bureau of Motor Carrier Safety at DOT, includes the potential for future damages.

We would define that as cancer phobia or risk of future harm, and when I was in law school, that was characterized as speculative or remote, and you can't predict it or price it as an insurance underwriter.

It is not just simply the pollution exposures associated with Superfund, but also perhaps the Motor Carrier Act financial responsibility requirements, and the RCRA financial responsibility requirements. By definition, one must obtain that insurance coverage as a prerequisite for doing business, so you have increased the potential liability exposure by defining used or recycled oil as hazardous, and you may have created a whole new set of extremely high minimum requirements for obtaining liability coverage as a prerequisite for doing business, and because we are reluctant to provide coverage in any pollution liability area, in many instances, these entities wouldn't be able to meet those financial responsibility requirements.

Thank you.

[Mr. Kimble's prepared statement follows:]

PREPARED STATEMENT OF JAMES L. KIMBLE, SENIOR COUNSEL, AMERICAN INSURANCE ASSOCIATION, WASHINGTON, DC

The American Insurance Association (AIA) is a trade association which represents 170 property and casualty insurance companies. The member companies of the Association provide the majority of commercial liability insurance written in the United States.

If used-recycled oil is designated as a hazardous waste under the Resource Conservation Recovery Act, a new set of transporters and facilities will be subject to the financial responsibility requirements in RCRA (1 million per occurrence-$2 million in the aggregate for sudden and accidental discharges and $3 million per occurrence-$6 million in the aggregate for nonsudden occurrences). These entities will experience the same extreme pollution insurance availability problems encountered by owner-operators of facilities providing hazardous waste treatment, storage, or disposal services currently subject to the Act.

The current pollution liability insurance crisis is the result of the convergence of: the inability to underwrite the strict, joint and several liability system established in CERCLA; the interpretation and administration of the CERCLA liability system by the Department of Justice and the Environmental Protection Agency; and the financial responsibility requirements in CERCLA, RCRA, and the Motor Carrier Act which make the acquisition of insurance a prerequisite for doing business. Additional components of the problem are the inherent difficulties associating with insuring nontraumatic, multiple causation, long-latency diseases and the judicial misinterpretations of pollution insurance policies. Much of the current unavailability of pollution insurance coverage is a result of initiatives taken by the Congress. It is hoped that the punitive nature of CERCLA's liability system and the misguided "surrogate regulator" role forced on insurers through the establishment of financial responsibility requirements can be altered by continued legislative and regulatory efforts.

The insurance industry's ability to provide a market for current and future environmental liability insurance has been crippled by legislative and judicial decisions that dramatically affect the liability of insurance companies under already issued policies. The root cause of this is the confluence of two events: responsible parties found liable for clean-up costs under CERCLA's expansive liability scheme seeking to shift those costs to their insurers and recent court decisions greatly expanding the scope of coverage of the liability insurance policies under which the CERCLA responsible parties are attempting to recover.

An ever increasing number of persons who are being found liable under CERCLA for clean-up costs are submitting claims for payment of those clean-up costs to their insurers. This represents a monumental problem for insurers in that the industry's standard liability insurance policies were not intended to cover the liabilities created by CERCLA. In fact, many of the liability policies under which CERCLA responsible parties now seek recovery were written prior to the enactment of CERCLA.

For already issued policies, CERCLA upsets the risk predictions that were the keystones of designing and pricing the insurance coverage. For the future, CERCLA creates one of the fundamental impediments to the ability of insurers to provide insurance coverage for environmental risks.

CERCLA accomplishes this by:

Retroactive Liability -- The Justice Department and EPA are interpreting CERCLA to impose liability for clean-up of those hazardous waste sites that were created prior to enactment of the law. Persons are being found liable under CERCLA's standards for conduct which, at the time it occurred, was permissible under federal law. As a result of the claims filed by these persons, insurers face the prospect of the imposition of massive retroactive liabilities.

Nearly Absolute Liability -- Section 107 of CERCLA imposes liability for cleanup costs and damage to natural resources resulting from "releases" of hazardous substances that is absolute except when a potentially responsible party can establish that the release was caused solely by an act of God, and an act of war, or by a third party with whom he had no direct or indirect contractual relationship.

Under this standard, consideration of the potentially responsible party's conduct is not relevant to the imposition of liability. Defenses which are available under the doctrine of strict liability -- state of the art, assumption of risk, misuse and subsequent alteration or modification -- have no bearing. However, the liability insurance held by the potential CERCLA defendant was based on the insurer's evaluation of the risks represented by that policyholder's activities and conduct. With CERCLA's nearly absolute liability, the insurer's evaluation of the risk presented by his policyholder has been divorced from the liability that that policyholder may be required to assume.

Joint and Several Liability -- CERCLA has been interpreted to provide for the application of joint and several liability. Under joint and several liability, each defendant is liable for all damages rather that being liable only for that defendant's contribution to the cause of the damages. Joint and several liability creates the likelihood that a policyholder's liability will bear no relationship to the policyholder's conduct. The policyholder's premium was based on the insurer's perception of the activities engaged in by that policyholder. The insurance policy was not issued with the intent of covering conduct of persons not party to the contract. Due to the application of joint and several liability, the insurance company is faced with providing coverage for which it received no premium.

Liability Without Cause -- The Justice Department agreed,[1] that CERCLA requires no showing by the Government that a substance for which the defendant was responsible has been released or threatens to be released from the site at issue. This statutory abrogation of the "cause-in-fact" concept creates a legal environment in which the insurer's coverage of an "occurrence" is irrelevant: liability attaches not to the release of a particular substance, but rather to the mere presence of that substance at a site from which there has been a release of some other substance. Insurance policies were neither designed nor priced to provide coverage for the liability of a policyholder arising from, in essence, a non-event.

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[1] *See U.S. v. South Carolina Recycling and Disposal, Inc.*, 10 Env't Rep. Cas. 1763 (S.D.C. 1984).

Almost from the origins of third party liability insurance to the last decade, the most basic principle governing tort law liability has been that responsibility follows possession or control of property. Further, that liability is then imposed only on clearly identified individuals or firms for conduct -- judged wrongful according to the standards of the time -- which is the cause, more probable than not, of actual injury to clearly identifiable victims.

CERCLA, on the other hand, establishes an absolute "cradle to grave" liability, retroactively as well as prospectively, for damage to natural resources and the costs of cleaning up the environment for a wide range of commonly used materials of varying degrees of toxicity. Should these materials be commingled at any particular site requiring remedial attention, the entire cost of cleanup is the joint and several responsibility of each firm whose hand has ever touched the materials in question. Possession or control is not material, nor is compliance with generally recognized practices, or even with formal safety standards. The relative harmfulness of the various materials is of no concern. And the ordinary rule of factual causation is being replaced by a virtually conclusive assertion that any amount of any material is the legal cause of the entire harm.

Recent court decisions have expanded insurance coverage beyond that which the liability policies were designed to provide. The Comprehensive General Liability ("CGL") insurance policy is the instrument used to provide the vast majority of insurance protection for commercial entities from liability for bodily injury and property damage. The standard CGL insurance policy is nothing more than a contract between the insurer and the insured in which, among others, the parties define both the risks covered by the insurance and those excluded from coverage. The premium charged by the insurance company relates directly to the frequency and severity of the risk that the company intends to insure.

Most relevant to claims for clean-up costs arising from CERCLA, the insurance industry intends its standard CGL policy to provide only for specifically defined events causing pollution which take place off the property of the insured and cause property damage or personal injury. The most crucial operative provisions in the standard CGL policy include:

- owned property exclusion: the CGL policy does not provide coverage against the costs of maintaining a policyholder's property. The industry rightfully believes that any coverage that creates a "moral hazard" -- an incentive to the policyholder to neglect a natural duty in order to benefit from his insurance -- should be avoided.

For example, a homeowner's insurance policy will not cover the costs of interior damage resulting from the insured's failure to repair leaks in his roof, but it will cover the cost of replacing that same roof if it is blown off in a windstorm.

In the hazardous waste context, the owned property exclusion in the CGL policy is intended to give the policyholder an incentive to comply with RCRA standards and properly maintain his property. The moral hazard that would attend the absence of such an exclusion of on-site coverage would be particularly acute in such an inherently dangerous activity.

Thus, the standard CGL policy contains an owned property exclusion which generally states that coverage would not apply to: "property damage to: (1) property owned or occupied by or rented to the insured, (2) property used by the insured, or (3) property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control."

- pollution exclusion: it was never the intention of the insurance industry to cover liability arising from all forms of pollution. Thus, every CGL policy contains provisions excluding certain forms of pollution from coverage. Companies have used different language to define the nature of the pollution that was not being covered in its policies. Most insurance companies chose to impose a temporal restriction and to permit coverage for only that pollution which was "sudden and accidental." With this exclusion, for example, the industry intended to cover the breach in the hazardous waste impoundment wall that caused wastes to run off onto neighboring property but not to cover the gradual leaking of wastes from that impoundment.

  A CGL policy containing the "sudden and accidental" exclusion provides: "This insurance does not apply ... to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental." (emphasis added)

- occurrence: coverage exists only if there is an occurrence which is defined as "an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured;"

property damage and bodily injury: The CGL policy contains definitions of the terms "property damage" and "bodily injury." These definitions are used to help determine (1) the events that must occur in order for there to be insurance coverage and (2) the level of benefits to be provided. The latter is to guarantee that insurance benefits are to be paid only for actual, not speculative, property damage or bodily injury.

In addition to these provisions, other language in the standard CGL policy establishes specific dollar limits of insurance coverage for each event triggering liability. By this language, the insurer sought to minimize the unpredictability that any liability system contains by establishing a limit on the amount of money that that insurer could stand to lose as a result of a particular event.

Court cases interpreting these critical provisions of the industry's CGL policy have expanded considerably the level of insurance coverage that the industry intended to provide. These court interpretations would require the industry to fund enormous obligations which it never contracted to assume, and for which it never collected a nickel of insurance premium.

Some decisions have gone so far as to rewrite policy terms and create coverage which insurers never intended to provide and for which no premium was ever collected. Specifically, court decisions have interpreted our standard CGL policy to broaden the scope of intended coverage as follows:

- Narrowing the intent of the owned property exclusion to find liability for damage to an insured's property.[2]
- Overriding the scope of the pollution exclusion so that, for example, well contamination caused by seepage at a hazardous waste site that occurred over a 12 year period was found to be covered despite the policy requirement that coverage be afforded for only "sudden and accidental" pollution.[3]
- Converting the CGL's policy dollar limit per occurrence into a per claim dollar limit.[4]

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[2] See for example, Riehl v. Travelers Insurance Co., ___ F. Suppl. ___, Civil Action No. 83-0085 (W.D. Pa., August 13, 1984).

[3] See, for example, Jackson Township Municipal Utilities Authority v. Hartford Accident and Indemnity Company, 186 N.J. Super. 156, 451 A.2D 990 (1982). Waste Management of Carolinas, Inc. v. Peerless Insurance Company, 323 S.E. 2D 726 (Court of Appeals of North Carolina, December 28, 1984).

[4] See Township of Jackson v. American Home et. al., Docket No. L-29236-8 (Law Div., August 31, 1984).

- Setting aside the definitions of property damage and bodily injury so as to award speculative damages for the possibility of future harm.[5]

There is no discernible trend relative to judicial misinterpretations of the comprehensive general liability insurance policy in order to find coverage to respond to waste treatment, storage and disposal facilities. It should be understood that the cases cited below clearly reflect a dichotomy on the part of the American judiciary. Some decisions find no ambiguity in the crucial insurance language. Others seem bent on the most expansive interpretations of law and contractual language. If those most expansive decisions are followed and upheld, the worst concerns of insurers will be borne out.

There are two lines of decisions interpreting the occurrence and pollution exclusion language cited above. Those which find coverage notwithstanding the exclusions are listed first. Those which deny coverage follow. Crucial cases are listed here.

In the case of Jackson Township Municipal Utilities Authority v. Hartford Accident and Indemnity Company, 451 A.2d 990, 186 N.J. Super. 156, (this 1982 Superior Court decision has been affirmed by the New Jersey Appellate Court and is scheduled for review by the state's Supreme Court) Justice Havey rendered the decision which epitomizes those cases in which coverage has been found notwithstanding the pollution liability exclusion. The court said:

> "When viewed in light of the case law cited, the clause can be interpreted as simply a restatement of the definition of 'occurrence' - that is, that the policy will cover claims where the injury was 'neither expected nor intended.' It is a reaffirmation of the principle that coverage will not be provided for intended results of intentional acts but will be provided for the unintended results of an intentional act."

The allegations against Jackson Township were that it had acquired a landfill in 1972 and was negligent in the selection of the site and the design and maintenance of that landfill. This resulted in seepage of pollutants into the Cohansy aquifer which apparently occurred over a period of twelve years, damaging 97 wells. The trial resulted in a verdict in favor of the well owners in an amount just under $16 million. That judgment included sums awarded for the disruption of quality of life due to the need for substitute water supplies, and sums to cover future medical monitoring to determine whether injuries had been sustained by the claimants. The portion of the award associated with "risk of future harm" was subsequently stricken in an appellate court review. In disposing of the language contained in the insurance contract which rendered coverage only if events were "sudden" and "accidental," the court said, "...although the permeation of pollution into the groundwater may have been gradual rather than sudden, the behavior of the pollutants as they seeped into the aquifer is irrelevant if the permeation was unexpected."

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[5] Ayers et. al. v. Township of Jackson, 189 N.J. Super. 561 (Ocean County, April 5, 1983).

Allstate Insurance Company v. Klock Oil Company, 73 A.D.2d 486 (Appellate Division 1980) involved interpretation of the same language of the pollution exclusion in an incident where a gasoline storage tank installed and maintained by the insured leaked. The tank was installed in 1971 and in 1974 an adjoining landowner complained of a contaminating leak. The court said, "If there was no intent to cause harm then any injury resulting from ordinary negligence is considered to be accidental," and in dealing with the question of whether the event was sudden, the court said,

> "Also the word 'sudden' as used in liability insurance need not be limited to an instantaneous happening (McGroarty v. Great American Ins. Co., 43 A.D.2d 368, 351 N.Y.S.2d 428, affd. 36 N.Y.2d 358, 368 N.Y.S.2d 485, 329 N.E.2d 172 Appellate Division). The term 'sudden and accidental' must be construed in its relevant context. The relevant context to be considered is the fact that it is a term employed by an insurer in the contract and should be given the construction most favorable to the insured. Thus, regardless of the initial intent or lack thereof as it relates to causation, or the period of time involved, if the resulting damage could be viewed as unintended by the factfinder, the total situation could be found to constitute an accident (McGroarty v. Great American Ins. Co., 36 N.Y.2d 358, 364, 368 N.Y.S.2d 485, 489) and therefore within the coverage afforded by Allstate in the comprehensive general liability insurance policy issued to Klock."

In CPS Chemical Company, Inc. v. The Continental Insurance Company and United States Fidelity and Guaranty Company, Superior Court of New Jersey, Law Division, Essex County, Docket No. L 039547-81, decided August 8, 1984, the court stated that the insurer's reliance upon the pollution exclusion had a "superficial attraction." The court justified holding against the insurance company with the following conclusion:

> "It is well recognized that ambiguities in insurance policies are resolved against the carriers which drafted them. Here, the words 'sudden' and 'accidental' have been interpreted by recognized dictionary definitions to include unexpected and unintended events. It may well be that the drafters of this clause believed that 'sudden and accidental' connoted a sense of a dramatic catastrophe, limited in

> duration and immediate in its consequences, but it cannot fairly be said that this was unambiguously expressed."

In United Pacific Insurance Company v. Van's Westlake Union, Inc., 664 P.2d 1262 (Court of Appeals of Washington 1983), the court concluded, "The insured in the case before us was not an active polluter. The gasoline leaking from a hole in the underground line was not expected or intended, nor was the resulting damage. Thus, the pollution exclusion clause did not exclude coverage for the third party claims and suits against the insured. To hold otherwise would permit the ambiguous pollution exclusion clause to unfairly devour much of the policy and relieve the insurer from liability clearly within the spirit and intendment of the policy."

A recent decision on the pollution exclusion appeared in Waste Management of Carolinas, Inc. v. Peerless Insurance Company, 323 S.E. 2d 726 (Court of Appeals of North Carolina, December 28, 1984). This case involved an insurance coverage question arising from litigation by the United States under Section 7003 of the Resource Conservation and Recovery Act. The United States had requested injunctive relief and reimbursement of costs arising out of groundwater contamination allegedly caused by the Flemington Landfill. The landfill owners in turn sought indemnity and contribution from the insured on the ground that it was careless and negligent in not exercising proper care to prevent the deposit of hazardous waste while it was delivering solid waste. These deposits had occurred from 1973 to 1979. The court in construing the pollution exclusion found that the meaning of "accident" should be determined by reference to the definition of "occurrence" and that in this instance the damages which occurred were neither intended nor expected from the standpoint of the insured. The court also said:

> "The exclusion hinges on the words 'sudden and accidental.' The policies do not define these words, and some courts have observed that this may be enough to create ambiguity in the exclusion."

The court went further and found:

> "We find that the word 'sudden' is reasonably susceptible of differing constructions and we construe it not to mean just 'instantaneous', but also 'unforeseen' or 'unexpected'. This construction renders the pollution exclusion consistent with the definition of 'occurrence' in the coverage provisions."

Not all courts have found that the pollution exclusion is ambiguous or subject to any of the interpretations cited above.

In Great Lakes Container Corporation v. National Union Fire Insurance Company of Pittsburgh, United states Court of Appeals for the First Circuit #83-1607 on January 3, 1984, the court said:

> "We agree with the district court that when the policy is read against the complaint there is no ambiguity and exclusion (f) applies. The government has alleged that Great Lakes is liable because pollution and contamination of the soil, surface and subsurface waters has taken place as a concomitant of its regular business activity. Property damage resulting from such activity falls squarely within the language of exclusion (f). There is no 'occurrence' within the meaning of the policy alleged, nor any allegation of a sudden and accidental discharge."

In this case, the defendants operated a barrel reconditioning business on their site where up to 60,000 drums were stored pending reconditioning. In the course of reconditioning, the barrels are emptied of chemicals and washed by various industrial processes. The wastes from the drums, it is alleged, were discharged upon the ground of the defendant, had contaminated the soil, and migrated toward the groundwater. It was also alleged that on or about March 10, 1980, there was a discharge of pollutants from the plant into a stream.

In American States Insurance Company v. Maryland Casualty Co., 587 F. Supp. 1549, U.S.D.C., E.D. Mich. (1984), the court denied insurance coverage in four lawsuits arising out of the dumping of toxic waste materials. It was alleged toxic wastes were dumped continuously from 1966 causing water source contamination. In the underlying action plaintiffs claimed harm to themselves and to the use of their property. In denying coverage, the court said, "The allegations in the four complaints suggest that the release of toxic materials was continuous and not in any way sudden or accidental, and therefore do not even arguably state an 'occurrence' which would require the insurers to defend and/or indemnify National Drum."

In the case of Barmet of Indiana, Inc. v. Security Insurance Group, Ind. App. 425 N.E.2d 201, (Court of Appeals 1981) it was held that the pollution exclusion was not ambiguous and excluded coverage. The court said,

> "Although Barmet could not predict exactly when its pollution control system would malfunction, it was shown that Barmet's system malfunctioned on a regular and frequent basis, ranging from daily to occasional. Barmet was aware of this problem and had received numerous complaints. With this factual background, we cannot accept Barmet's contention that the discharge of the emissions was sudden and accidental within the meaning of the policy. Although Barmet may not have intended for the emissions to obstruct the visibility and thus, perhaps, contribute to the accident, this problem was certainly foreseeable because Barmet had received numerous complaints regarding their emissions. Barmet may have been unable to predict the

It is worth noting in this troublesome area that the duty of an insurer to provide a legal defense is generally broader than its duty to indemnify and often exists until it is clear that no facts which could lead to indemnification can be reasonably expected to be proved. (See Travelers Indemnity Company v. Richard Dingwell, supra. These expenses are not usually included in the policy's dollar limits.)

Pollution insurance protection for those who transport used or recycled oil will be as unavailable as for those who store or treat it. Section 30 of the Motor Carrier Act directs the Secretary of Transportation to establish regulations to require minimum levels of financial responsibility sufficient to satisfy liability covering "public liability, property damage, and environmental restoration (Emphasis added) for the transportation of property for hire by motor vehicle..." The endorsement (Form MCS-90) which must be attached to the commercial auto insurance policy in order to comply with the Motor Carrier Act contains the following definitions.

> ENVIRONMENTAL RESTORATION means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and cost of necessary measures taken to minimize or mitigate damage or potential for damage to human health (emphasis added), the natural environment, fish, shellfish, and wildlife.
>
> ACCIDENT includes continuous or repeated exposure to conditions which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

The definition of "facility" in the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" includes "motor vehicle". Motor vehicles for hire are subject to the strict, nearly absolute, joint and several liability system established in "Superfund". The transporter's liability does not terminate when it gives up possession of the hazardous substance.

Before the enactment of the Motor Carrier Act, commercial auto insurers responded to bodily injury and property damage, but they remain unfamiliar with judicial interpretations of damages associated with "environmental restoration". The enormous unintended exposures associated with Superfund have created a reluctance on the part of commercial auto insurers to provide coverage for environmental restoration under the Motor Carrier Act. Lack of familiarity with the liability exposure associated with the term, and the possibility of judicial misinterpretations of key words and phrases in the Form MCS-90 or the insurance policy have created a reluctance on the part of insurers to provide the coverage.

As a general rule of measuring damages, courts have traditionally rejected awarding compensation on the basis of speculation. Claimants have been required to prove their actual damages and damage awards have been measured on this basis.

The foregoing notwithstanding, DOT's definition of "environmental restoration" expanded the measure of damages and, concommitantly, the liability of insurance companies, by defining environmental restoration to include the "potential for damage" (emphasis added). This has created a very serious problem in the trucking and insurance industries, as insurance companies have found it increasingly difficult to price or continue to provide coverage to compensate today for speculative damages which, if they occur, may not arise until many years after the event from which the damages are said to arise.

If it is the intent of the Environmental Protection Agency or the Congress to regulate all used oil as hazardous waste under the Resource Conservation and Recovery Act, we urge that serious consideration be given to the consequences associated with the severe insurance availability and affordability problem which will result. A combined total of $8 million in pollution insurance coverage in order to meet the financial responsibility requirements in RCRA will be a prerequisite for doing business for those who store, treat or transport used or recycled oil. For a vast majority of these entities, this coverage will be unavailable.

Respectfully submitted,

James L. Kimble
Senior Counsel

Mr. STENHOLM. Persons handling petroleum or petroleum products are still able to obtain insurance because of the petroleum exclusion in section 1014 of the Superfund. This section prohibits the imposition of strict, joint and several liability under Superfund in the event of petroleum releases.

First question, from an insuror's standpoint, is it possible to price insurance coverage for a business under a liability system which virtually guarantees that the insured company will be asked to pay more than its proportionate share?

Mr. KIMBLE. I think I have already answered that. Most of my companies simply refused to even walk into that thicket. They do not want to provide the coverage for the reason you mentioned.

Mr. STENHOLM. To the extent that used oil becomes statutorily exempt from Superfund liability by way of the Skelton language or some other similar vehicle, would general liability insurance continue to be available to service stations, truck stops, recyclers, et cetera?

Mr. KIMBLE. My best speculation is that it would be.

Mr. STENHOLM. I have no further questions.

Our last panel, we call Mr. John Steigerwald and Ms. Kathryn Gunkel.

TESTIMONY OF JOHN STEIGERWALD, MANAGER, U.S. OPERATIONS, CINCINNATI MILACRON MARKETING CO., REPRESENTING THE INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION, ACCOMPANIED BY WILLIAM J. GRUBER, VICE PRESIDENT AND GENERAL MANAGER, PRODUCTS DIVISION, AND JOHN L. WITTENBORN, COLLIER, SHANNON, RILL & SCOTT

Mr. STEIGERWALD. Mr. Chairman, to my right is William J. Gruber, vice president and general manager of the Products Division of Cincinnati Milacron and to his right is John L. Wittenborn from Collier, Shannon, Rill & Scott, representing the legal firm of the Independent Lubricant Manufacturers Association.

Mr. Chairman, as you have heard today, enactment of the proposed regulations has a broad spectrum impact. It has broadened also my own particular scope of that impact.

My concentration of effort in this testimony here is to present issues that have not yet been presented to this subcommittee, and that is from the industrial sector, which is quite broad, vast, and the impact of an enactment of an issue of used oil as hazardous waste affects them very drastically also.

I am John Steigerwald, U.S. operations manager of the Cimcool Division of Cincinnati Milacron Marketing Co. of Cincinnati, OH. I appear today on behalf of the Independent Lubricant Manufacturers Association [ILMA], of which my company is a member.

We appreciate this opportunity to present our views on the Environmental Protection Agency's proposals to list used oil as a hazardous waste under the Resource Conservation and Recovery Act and to establish management standards for used oil that is recycled, and on the used oil amendment pending in the House and Senate Superfund conference.

By way of introduction, ILMA is a national trade association of 156 small businesses, ranging in size from fewer than 10 to more than 200 employees, which blend, compound, and sell more than 20 percent of the United States lubricant needs. ILMA member companies are neither owned nor are they controlled by the companies that explore for, own, or refine crude oil used to produce lubricant base stocks. Independent lubricant manufacturers compound and blend purchased base stocks and additives to produce high-quality automotive and industrial lubricants. According to industry surveys, ILMA members produce more than 20 percent of the vehicle engine oils and more than two-thirds of the metalworking and industrial lubricants sold in the United States.

ILMA's concerns with the used oil proposals stem from its members' roles as participants in the used oil management system and as a principal source of lubricants to the diverse regulated community affected by the Agency's rulemakings. Many ILMA member companies, for example, own and operate truck fleets to deliver their products and generate used crankcase oils from their vehicle maintenance operations. In addition, many ILMA members have laboratories at their facilities to test customers' in-use oils to determine whether reconditioning or replacement of the lubricants is necessary. Some ILMA member companies transport their customers' used oils back to their facilities for recycling.

ILMA opposes the listing of all used oil as a RCRA hazardous waste. Such listing is neither required by statute nor has it been shown to be necessary for the protection of human health and the environment. The Agency has not justified adequately the need for listing all used oils under subtitle C of RCRA and has exceeded its statutory authority in broadly defining used oil.

If EPA's listing proposal is adopted, it would create disincentives to recycling that would lead to more used oil being returned to the environment and, consequently, to less protection of human health and the environment. In addition, it would create cost and other burdens for many participants in the used oil management system, including ILMA members.

I would like to focus my comments on the proposals' effects on the metalworking, machinery, and allied industries. These rules will impose a confusing and counterproductive set of requirements on virtually all of industrial America. For example, EPA proposes an expanded regulatory definition of used oil. However, this proposed definition is not clear as to scope or intent, particularly with the inclusion of synthetic fluids termed to be oil. Consider its application to metalworking oils. Synthetic metalworking lubricants generally are not viewed by the lubricants industry as oils because they contain no mineral oil when formulated. However, these lubricants do contain surfactants, corrosion inhibitors, coupling agents, germicides, defoamers, and other nonpetroleum functional additities. As the regulation is proposed, these used lubricants would be deemed to be used oils even though they do not meet the statutory requirement of being derived from petroleum.

I would like to also add some data to highlight both from what the EPA had mentioned this morning, which they really didn't particularly hone in on, the segment of business called water-based metalworking fluids that would also be termed to be hazardous waste under the proposed regulations.

The fluids utilized in the cutting, grinding, forming processes is estimated to be 124 million gallons. Of this, 98 million gallons is estimated to be water-based fluids.

If it is assumed that this volume would be diluted by a factor of 20, which is not unreasonable in use, there would be 2 billion gallons of used fluids that could be termed to be hazardous.

Disposal of hazardous wastes costs our company an average of 30 cents per gallon today. This represents a cost of approximately $600 million to the metalworking industry.

Since the waste treated is in fact not hazardous and already regulated by RCRA, there is no benefit associated with its cost burden beyond complying with an arbitrary rule.

The statutory definition of used oil provides that a substance, to be classified as used oil, must be chemically contaminated as the result of use. EPA proposes to broaden Congress' definition to include used oils that are contaminated through subsequent management, or after use.

This attempted expansion seriously affects the listing proposal.

The Agency uses the presence of post-use contaminants in some used oils as the basis for its finding that all used oils, particularly those that have not been adulterated after use, are RCRA subtitle C hazardous wastes. The Agency, thus, avoids an analysis of whether specific types of used oils, such as hydraulic oils, diesel engine oils, and the like, actually are hazardous.

EPA bases its listing decision on an analysis of 1,071 samples of used oil. This study is seriously flawed and an unreliable data source. No example of the methodology used to collect the used oil samples was provided by the Agency. The report's authors candidly admit that only 40 percent of the 1,071 analyzed used oil samples could be classified according to source; that is, originating in either the automotive or industrial sector.

A major problem with the study's methodology is that the results of the analysis tell us nothing about the content of used oil contaminated through use. By relying on the report, EPA has used the presence of post-use contaminants in some mixtures of used oils as a basis for its conclusion that all used oils are hazardous wastes.

ILMA believes that such a conclusion is tenuous at best and that no statistically valid generalizations can be made on the basis of this study. If the Agency wishes to regulate used oil as intended by Congress, it should do so only after adequately testing used oil classified into categories that reflect the differing potentials for contamination created by particular uses.

In the preamble to its listing proposal, EPA states that the principal reason for listing used oil as a RCRA hazardous waste is the presence of toxic constituents in significant quantities. Specifically, the Agency expressed concern about the presence of lead, three types of chlorinated hydrocarbons, naphthlene, and toulene.

ILMA wishes to emphasize that its members do not formulate lubricants, industrial, metalworking, or automotive, with these substances. While these are clearly constituents of concern, they are unlikely to be present in significant quantities in various types of used oil.

For example, one would expect to find lead in samples of certain used crankcase oils. However, one would not ordinarily expect to find lead in samples of used industrial or metalworking lubricants.

ILMA member companies routinely sample and test their customers' lubricants to determine whether they still have the necessary additives to provide the desired performance. Many ILMA members have indicated that their testing has not revealed the presence of the toxic constituents of concern to EPA, with the exception of lead, at levels exceeding generally recognized detection levels. Lead levels in used gasoline engine crankcase oils should be decreasing with EPA's lead phasedown program for fuel oils.

ILMA believes that a significant number of generators, particularly in the industrial and metalworking areas, produce relatively clean used oils. Under EPA's proposals, these generators would have to delist their oils by a petition process in order to avoid the burdens of the regulations. Such a situation would penalize precisely those generators who are successfully managing their used oils, forcing them to incur the cost of the delisting procedures, as well as the costs of complying with the hazardous waste regulations, pending the outcome of their delisting petitions. This result would be especially harsh on many ILMA member companies' customers who employ literally hundreds of different formulations of lubricants in their operations and who would have to submit individual delisting petitions for each of these products.

ILMA has recommended that EPA withdraw its proposal to list used oil as a RCRA hazardous waste. In making this recommendation, ILMA is not asking the Agency to abandon all regulation of used oil. Rather, ILMA believes that there are other regulatory approaches that better protect human health and the environment. If, however, EPA insists upon listing used oil as a hazardous waste, it should do so only after testing oil contaminated through use for the toxic constituents of concern. Even then, the Agency should only list those specific types of used oil which, indeed, are hazardous.

As to EPA's recycled used oil standards, the Agency generally assumes that used oil is listed as a hazardous waste and that generators and transporters of used oil should be regulated using existing subtitle C hazardous waste rules.

EPA has decided on this approach even though many used oils are not hazardous and probably are not discarded and, thus, do not meet the basic RCRA statutory definition of solid waste.

Accordingly, based upon its recommendation that EPA withdraw and reconsider the listing proposal, ILMA has suggested modifications to the Agency to improve the ability and willingness of generators and others in the used oil management system to recycle their used oil. ILMA, however, remains concerned that any regulatory actions by EPA not discourage current recycling practices.

While I will not go into ILMA's specific recommendations as to modifications of the proposed management standards, I would like to stress two points.

First, regardless of the outcome of EPA's deliberations on the management standards, the Agency's proposals already are having a significant impact in the marketplace. Small- and medium-sized businesses often consider publication of proposals in the Federal Register as law.

These businesses do not have the staff or expertise to decipher many pages of fine print. My company already is seeing a number of customers inquiring about substitutes that would not be considered used oil under EPA's proposed scheme. However, given the expanded definition in the Agency's proposal, it is likely that any substitute—such as used water-based metalworking fluids—would be regulated.

Most metalworking lubricants users, as well as others, are quite concerned with the increasing costs of transporting and recycling their used oils. These increased costs already are being seen in the marketplace even before EPA's used oil rules have been finalized. It is likely that these transportation and recycling expenses will grow even further and will become a substantial cost of doing business. In fact, it would not be uncommon to have such costs exceed the purchase price of the virgin material.

Second, I want to emphasize that many of the businesses that would be affected by the Agency's used oil proposals are facing for the first time an array of other environmental regulations. For example, many companies have underground storage tanks that will become subject to the new requirements under subtitle I of RCRA, as well as the small-quantity generator of hazardous waste rules issued by the Agency on March 24. ILMA believes that EPA has not adequately assessed the overlap and cost impact of these various requirements. ILMA is aware that the Small Business Administration has performed such an analysis for service stations. ILMA assumes that the effects will be similar for other businesses.

Based upon the broad definition being proposed to define used oil, every machine shop across the United States would be classified as a generator of hazardous wastes, even if the shop is using a product with no or little oil or even if the oil is clean.

According to the 13th American Machinist Inventory of Metalworking Equipment, published in 1983, there are approximately 1,702,833 pieces of metal-cutting equipment in the United States. Seventy-four percent of this equipment is in shops with fewer than 500 employees, while 42 percent is in shops with fewer than 100 employees.

The inventory, conducted every 4 years, indicates that there are 3,000,323 total pieces of metalworking equipment, including metal forming and joint and assembly machinery, in the country. Seventy-three percent of this machinery is in shops with fewer than 500 employees, while 39 percent is in shops with fewer than 100 employees.

My reason for citing these data are that EPA's proposed regulations will touch the majority of industrial businesses in the United States. The greatest burdens will fall on the smallest companies that do not have the resources to interpret the used oil rules.

In addition, the major users of metalworking lubricants—automotive, construction, bearing, machine tool, appliance, electrical generating, and aircraft industries—are distressed industries facing increasing, stiff competition from foreign sources. Their ability to survive is critical to the economic and physical security of the country. The imposition of additional regulatory burdens by EPA's used oil proposals would result in increased costs and the loss of more jobs in these industries.

ILMA has been working actively with Members of Congress and their staffs on the used oil amendment to the pending Superfund reauthorization legislation. ILMA would like to publicly thank the chairman of the subcommittee for his efforts. ILMA cannot stress enough the importance of this amendment to the regulated community, including independent lubricant manufacturers.

ILMA believes that the used oil amendment provides the incentive for persons in the used oil management system to recycle properly their used oil. Given the burdens and problems associated with Superfund responsibilities and liabilities, we urge Congress to continue the exclusion from Superfund for used oils that are clean or that are recycled in accordance with the management standards EPA promulgates.

In summary, EPA should withdraw its proposal to list all used oils as RCRA hazardous wastes. While ILMA does not believe that used oil should go unregulated, EPA must assess the need and justification for listing all used oils as RCRA hazardous wastes. Only those used oils that are, indeed, hazardous should be regulated as such.

Further, as recommended to EPA, ILMA believes that the management standards should be revised to reflect any changes in the listing decision, as well to encourage more of the used oil to enter the used oil management system.

Finally, ILMA appreciates the efforts to date on the used oil amendment to the Superfund reauthorization legislation. Used oil that is clean or that is recycled in an environmentally acceptable fashion must continue to be excluded from Superfund.

Thank you for this opportunity to present ILMA's views. I will be happy to respond to any questions that my testimony may have raised.

Mr. STENHOLM. Thank you.
Ms. Gunkel.

TESTIMONY OF KATHRYN O'CONNOR GUNKEL, DIRECTOR, ENVIRONMENTAL AND SAFETY OPERATIONS, NATIONAL ASPHALT PAVEMENT ASSOCIATION

Ms. GUNKEL. Mr. Chairman, thank you for inviting me here to speak to you today.

My name is Kathryn Gunkel, and I am the director of environmental and safety operations for the National Asphalt Pavement Association [NAPA]. The National Asphalt Pavement Association is the only national association representing hot mix asphalt [HMA] producers and paving contractors, as well as their supporting industries.

NAPA member firms produce approximately 75 percent of the total HMA produced in the United States annually—480 million tons in 1985—and approximately three-fourths of our members qualify as small business firms by the Small Business Administration definition.

NAPA has long held a policy of considering and supporting activities on the basis of whether they are, first and foremost, best for America; second, best for the hot mix asphalt industry and; third, best for the association.

It is our belief that a strong and healthy nation is the best environment for free enterprise and opportunities for business success.

We are here to discuss the proposal by the Environmental Protection Agency to list used oil as hazardous waste and the effect such an action would have on small businesses.

According to conversations I have had with EPA staff members and members of the National Oil Recyclers Association, EPA wants to see used oil burned in HMA facilities. In fact, they would like to see this consumption increase threefold over their estimates of current consumption.

However, at the same time they want to list used oil as hazardous waste and/or impose special management standards that are unrealistic for an average HMA facility to comply with.

If used oil is listed as hazardous waste, the consumption of used oil for energy in HMA facilities will decrease significantly, especially among small HMA facilities.

The management standards require environmental expertise far beyond what can be commonly found at a HMA facility.

Attached to my testimony I have submitted a special report we issued to our membership basically outlining the permit requirements they would have to meet in order to apply for a RCRA part B permit.

Environmental impairment insurance is not available at any cost and the setting aside of assets would be out of the question for most of our member firms.

Many HMA facilities are portable, and on the average, change location about once a year, and almost all of them burn oil for fuel.

Frequently, the property on which the HMA facility sits is owned by another party. If used oil is listed as hazardous waste, he must become involved in the management standards of this hazardous waste. Most owners of portable HMA facilities do not believe they could get permission to burn hazardous waste on property owned by another party.

I have talked with some of the State associations in States that have already listed used oil as hazardous waste and have learned that HMA facilities simply do not burn used oil in those States.

In one State continuous emission monitoring for carbon monoxide, a combustion product, is required when burning hazardous waste. The concentration of carbon monoxide in the exhaust gas is an indication of the combustion efficiency of the equipment. The State association executive says that the costs of installing and maintaining this equipment far exceed the savings gained from the lower priced used oil, and therefore, used oil is not burned in the State.

However, HMA facilities are in a position where they have a wide choice of fuels to choose from, because of the availability of burners for each fuel. For the most part, the choices are natural gas, liquid propane, No. 2 fuel oil, No. 6 fuel oil and coal.

When the price of oil was quite high, coal proved to be a very cheap source of energy. In today's oil market, there is little economic incentive to buy used oil over virgin oil, especially considering the detrimental effects on our equipment from the chlorine commonly present in used oil.

In the State of Washington, a member firm reports that he is buying No. 2 virgin fuel oil at 43 cents per gallon, while in Indiana, a member firm is paying 41 cents per gallon for reprocessed used oil, and No. 2 virgin fuel oil is available at 46 cents per gallon.

However, in our industry, nobody expects the low oil prices to continue for a long period of time. Hence, used oil will regain its simple economic advantage in the fuel market, if it is not burdened with the stigma of being a hazardous waste.

The industry estimates that only about half of the annual fuel consumption is fuel oil, virgin or used. The average consumption of No. 2 fuel oil is 2 gallons per ton of HMA produced. If half of the annual production in 1985 had been produced with No. 2 fuel oil, 480 million gallons—12 million barrels—would have been consumed.

The National Asphalt Pavement Association believes that the burden of regulation of used oil should be placed on the reprocessor. If he is producing a quality product, and reducing the contaminant levels, why call it hazardous waste? Our industry would like to see such regulation because the cleaner the used oil, the less damage that occurs to our facilities.

NAPA does not believe that the burner should be completely free of regulation in respect to storing the used oil, however, we do feel that the proposed management standards are too much. We understand that one of the goals of RCRA and the regulation of used oil is to protect against ground water contamination, hence, NAPA respectfully submits the following as reasonable management practices for used oil at the HMA facility:

First, storage in aboveground tanks only. In that manner, inspections can be made regularly of tanks for leakage or any other source of contamination.

Second, secondary containment, tubs or a system in which, if the tank fails, the contents of the tank can be held by a secondary type of containment.

Third, adoption and adaptation of the spill prevention control and countermeasure [SPCC] plan. This plan's main thrust is to define engineering systems in place that will prevent spills from occurring and, in the event a spill does occur, the proper containment and spill response procedures.

It may be necessary to lower the exemption limit from 42,000 gallons of storage capacity to include most facilities burning used oil. As far as HMA facilities are concerned, every one is required to have a SPCC plan.

In conclusion, the National Asphalt Pavement Association wishes to stress that we believe that recycling used oil for energy recovery is an excellent way to protect ground water, the environment in general, and prevent their contamination from illegal and uncontrolled disposal.

Furthermore, HMA facilities have the capability of destroying the used oil and can be a viable recovery and destruction facility for used oil, if the regulations for used oil make it a viable choice for the facility owner.

The dollars spent on purchasing used oil are essentially dollars spent on an American made product, and it would be regrettable to see those dollars go to the purchase of fuel oil derived from imported crude oil.

Consequently, we strongly urge the EPA to consider alternative regulations for used oil, instead of listing it as hazardous waste and/or imposing the proposed special management standards for the burner.

Thank you, Mr. Chairman, for this opportunity to express NAPA's views and opinions on the proposed listing of used oil as hazardous waste. If there are questions that I can answer, please feel free to ask.

[Attachments to Ms. Gunkel's testimony follow:]

napa

National
Asphalt
Pavement
Association

Mailing Address:
P.O. Box 517
Riverdale, Maryland 20737-6881
Street Address:
6811 Kenilworth Avenue
Riverdale, Maryland 20737-6881
(301) 779-4880

John Gray
President

April 9, 1986

Mr. Lee M. Thomas, Administrator
Environmental Protection Agency
401 M Street, N.W.
Washington, D. C. 20460

c/o: Docket Clerk
Docket No. 3001/Listing of Used Oil
Office of Solid Waste (WH-562)

Dear Mr. Thomas:

The National Asphalt Pavement Association (NAPA) has reviewed the proposed rule published by the Environmental Protection Agency (EPA) on March 10, 1986, regarding the listing of used or reclaimed oil as hazardous waste under the Resource Conservation and Recovery Act (RCRA). After discussing this matter with EPA personnel in the Office of Solid Waste, the oil recycling industry and the insurance industry, and among our NAPA members, comments are submitted, as well as answers to the numerous questions asked in the Federal Register item, as applicable.

The National Asphalt Pavement Association is the only organization representing Hot Mix Asphalt (HMA) producers nationally. NAPA-member firms produce approximately 75% of the total HMA produced in the United States annually (480,000,000 tons in 1985). More than three-fourths of NAPA's members qualify as small business firms, under the definitions of the Small Business Administration.

The National Asphalt Pavement Association is opposed to the attempts by EPA to list used oil as hazardous waste. NAPA suggests that the EPA consider abandoning the idea of listing reprocessed used oil as hazardous waste when it is burned for heat recovery. In addition, we suggest that any regulatory burden be placed on the reprocessor and NOT the end user (burner). Once reprocessed, it should be considered a commodity, not a hazardous waste. Furthermore, we are very concerned to learn that the Agency has counted heavily on the increased use of used oil in our Industry, and based much of its economic analysis on that assumption, while neglecting to consult NAPA concerning the role of used oil in, and the impact of this proposed regulation on, the Hot Mix Asphalt Industry.

The energy consumption in fuel for HMA production is approximately 84.6 million MM Btu's, annually (which is equivalent to 600 million gallons of No. 2 Fuel Oil or 14.3 million barrels). Currently, the EPA estimates that

the HMA Industry consumes 89 million gallons of used oil out of the estimated 564 million gallons that are burned annually, which is approximately 14.8% of the fuel consumption in our Industry. EPA has stated that they would like to see the used oil fuel consumption in HMA facilities rise to 299 million gallons annually (approximately 50% of the Industry's fuel consumption). If used oil is listed as hazardous waste, consumption of used oil in the HMA Industry will only drop, possibly precluding its use altogether. If HMA producers turn to virgin fuel oil, increases in imported crude oil could reach $100 million dollars in five years or less. Every dollar spent on reclaimed used oil is a dollar spent on American-made products.

There are problems with burning highly chlorinated used oil in HMA facilities. The hydrochloric acid generated in the burning of chlorine is very corrosive to the equipment, especially with the amount of water vapor present in the exhaust gases. This problem can be offset by using limestone aggregate as an absorption medium, thus reducing damage to the equipment, as well as acid emissions to the atmosphere. However, the use of limestone does depend on the customers' design specifications, and can increase the cost of producing a ton of HMA (especially if limestone is not readily available in the local region). In our case our customers are predominantly public agencies, which tend to be rigid in design specifications. Because of the corrosion problems, a great deal of care must be taken when purchasing and burning used oil. The lower the chlorine concentration, the more desireable is the reprocessed used oil.

NAPA believes that the HMA facility is one of the best types of facilities available to destroy used oil. On the other hand, if the use of used oil becomes too burdensome from the regulatory aspect, the HMA producer has a variety of fuel choices to choose from: coal, natural gas, liquid propane and the various virgin oils. If it is the EPA's desire to see used oil burned in HMA facilities, it will have to strike a balance between the perception of the effects on human health and the environment, and the realities of what the HMA Industry can handle in the way of procedural regulations.

Another matter for concern is the image of the HMA facility in the public's eye. Currently, almost every new facility locating in or near a population center risks opposition by local residents. Those risks become greater where local community right-to-know laws exist. Hazardous waste is a very emotional issue and community opposition can stiffen when the stigma of hazardous waste becomes an issue.

National Asphalt Pavement Association

EPA Docket Clerk, Docket No. 3001

The purpose of this letter is to point out to EPA what would be some of the potential regulatory burdens on the HMA Industry if used oil were listed as a hazardous waste, and to make suggestions as to what the Industry might consider as reasonable. Even if EPA did not list used oil, but instead imposed the proposed special management standards, the standards would still be burdensome.

The burden of these proposed rules occur when one reads 50 FR 49236, IV.B.1.d--Additional Parameters. Many HMA producers would fall into this category because they operate quality control laboratories that generate hazardous waste (spent solvents). Under the March 24, 1986 rule for 100-1000 kg/month generators of hazardous waste almost all of these producers are brought into the hazardous waste/RCRA system. So, now they are managing other hazardous wastes on the facility. Therefore, they are no longer eligible for a "Permit-by-Rule," and must seek an individual permit for handling both the used oil and the hazardous waste. However, since the "Permit-by-Rule" requirements are virtually the same as those of a Part B permit, the "Permit-by-Rule" would turn HMA producers from using used oil.

What is not clear in this preamble is whether:

A. A 100-1000 kg/month generator that stores their hazardous waste for the legal amount of time is considered to be "handling other hazardous waste" or whether only hazardous waste Treatment, Storage or Disposal (TSD) facilities are considered to be such handlers. Without such clarification, these generators must necessarily be included.

Or, whether,

B. A Small Quantity Generator (less than 100 kg/month) is considered to be "handling other hazardous waste", and whether they can burn their spent solvents without a RCRA permit (whether formal or by rule).

The requirements of a RCRA Part B permit application and the "Permit-by-Rule" for the used oil burner/hazardous waste generator would be completely beyond the expertise and financial means of the average HMA producer. First and foremost is the problem of evidence of environmental impairment insurance. Recently, the insurance industry decided not to offer any kind of environmental impairment insurance. If used oil is listed as hazardous waste, the HMA producer has absolutely no coverage. If it remains just as used oil, the HMA producer will have some limited coverage, according to our information.

National Asphalt Pavement Association

Then there are the requirements for developing a post-closure plan, and setting aside assets for the post-closure plan. The HMA producer will never consider doing such a thing. They would sooner pay more for the fuel, rather than "tie-up" some of their assets. The average HMA producer does not have the expertise available on hand to prepare closure plans, detailed engineering drawings/plans, a waste analysis plan, etc. They would have to rely on expensive consultants.

Portable HMA facilities compound the problem. On the average, they are moved every year to a new location for a new job. These facilities almost always use fuel oil, more than any other type of fuel available. The property on which the portable HMA facility is located is rarely owned by the owner of the HMA facility. With the joint and several liability aspects of Superfund, it is unlikely that the property owner will give permission for hazardous waste to be stored and burned on the premises.

Then one must consider the Hazardous and Solid Waste amendments of 1984. The most pressing of which is the issue of permits for "prior releases" and solid waste management units, where every solid waste previously handled must be identified, and a ground-water study must be performed or, at a minimum, a plan submitted for such a study. Furthermore, with every state issued RCRA permit, there will have to be a concurrent RCRA permit from EPA for those recent RCRA amendments for which states are not yet authorized.

What can the HMA Industry handle as far as regulations are concerned, in order for EPA to see an increased use of used oil in the HMA industry? Storage requirements should be developed that are sufficiently protective of the environment. We believe if the used oil is reprocessed, and brought into specification as determined by the EPA, that secondary containment and the Spill Prevention Control and Countermeasure Plan (SPCC) should be sufficient. Afterall, the presumption of reprocessing is that the used oil is "cleaned up", and brought into specification. Additionally, it might be necessary to require that all storage tanks with reprocessed oil be above-ground, and all piping exposed, so that leaks are readily visible.

Sincerely,

Kathryn O'C. Gunkel
Director of Environmental and Safety Operations

National Asphalt Pavement Association

EPA Docket Clerk, Docket No. 3001

cc: J. C. Sanders, Administrator
Small Business Administration

James C. Miller, III, Director
Office of Management and Budget

ANSWERS TO QUESTIONS FOUND IN MARCH 10, 1986 FEDERAL REGISTER (pages 8206 and 8207):

QUESTION SET #1: In the literal sense, there would be no increase in insurance costs, because there is no environmental impairment insurance available to buy. But, Hot Mix Asphalt producers are not currently insuring themselves for superfund problems, either.

QUESTION SET #3: If recycled used oil is listed as a hazardous waste, the majority of Hot Mix Asphalt producers will stop burning the used oil and turn to virgin oils, coal, natural gas or liquid propane. Currently the price differential between used oil and virgin oil is just about the cost of transportation, in the area of three cents to four cents per gallon.

When used oil is listed as hazardous waste, the total cost of using the used oil is more than the invoiced price per gallon the burner pays. It also includes the cost of applying for a Part B permit or "Permit-by-Rule", and the costs of meeting the criteria demanded by those permits. The requirements of the "Permit-by-Rule" or Part B application are generally out of reach for a HMA producer because of the impact they would have on the HMA producer's pocketbook and the lack of expertise available from within the company. In the face of these regulations, the HMA producer would sooner turn to another fuel, rather than deal with the paperwork and costs of burning a cheaper reprocessed used oil.

QUESTION SET #6: The special management standards are unacceptable to the HMA Industry because of the "Additional Parameters" (FR 50 49236, IV.B.1.d). Most HMA producers handle other hazardous wastes at their facilities from Quality Control Laboratories and degreasers. Beyond the SPCC requirements of the plan and, possibly secondary containment, the HMA producer would not consider burning used oil under more burdensome regulatory requirements.

National Asphalt Pavement Association
6811 Kenilworth Avenue, Suite #620
Riverdale, Maryland 20737

napa
PLEASE ROUTE TO:
☐ Finance/Acct.
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☐ Plant
☐ Paving
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NAPA SPECIAL REPORT
National Asphalt Pavement Association

EPA REGULATIONS ON USED OIL
(Proposed and Final Rules)

By: Kathryn O'Connor Gunkel, Director of
Environmental and Safety Operations

May 5, 1986

As has been previously reported, on November 29, 1985, EPA published a Final Rule and a Proposed Rule on Used Oil, whether it is reprocessed or not. The final rule sets maximum levels for certain contaminants, (not including lead), for oils that can be burned in residential boilers or furnaces. It also established two deadlines, one for notifying the EPA (or state) that you are currently burning a used oil and another for documentation of used oil generated by equipment and vehicle maintenance. The proposed rule deals with establishing maximum lead concentrations and the listing of used oil, with a concentration of any one of the contaminants above the limit, as hazardous waste. It also proposes special management standards for storage of used oil at a facility that treats it, stores it, or burns it.

When you submitted Form 8700-12 to the EPA (or state) notifying them of your hazardous waste activities (hazardous waste generator, used oil generator, used oil burner, etc.), you submitted what is commonly referred to as a Part A RCRA Permit Application (RCRA = Resource Conservation and Recovery Act). Logically, a Part B RCRA Permit Application would follow. However, the Part B application isn't always required. Generally, the Part B RCRA Permit isn't required for the recycling process, such as recovering solvents or burning hazardous waste (does not apply to air quality permits), but is required for storage operations.

If you have a solvent recovery unit at each site where spent solvents are generated, and recover only those wastes, you do not need a Part B RCRA facility permit. This also applies if you burn the hazardous waste in the HMA facility. (Assuming you do not generate more than 1,000 kg/month of the hazardous waste, and do not store it for more than six months). If you have a solvent recovery still with which you recover spent solvents transported from separate facilities, then you are considered to be operating a RCRA facility and must file a Part B RCRA permit application.

How does this pertain to used oil?

If used oil is, in fact, listed as a hazardous waste (effective November 29, 1986, unless EPA changes its mind), burning used oil will be considered a RCRA permittable activity. EPA proposes to regulate this on a "Permit-By-Rule" basis rather than requiring a full Part B RCRA Permit Application, unless you handle any other kind of hazardous waste at the same location. In that case, the full Part B RCRA Permit Application would be required.

It is assumed herein that EPA will not change its mind about listing used oil as hazardous waste. Therefore, substitute "used oil" for "hazardous waste" and you will get an idea of the extent of the requirements for burning it (as hazardous waste). These requirements are not detailed, at this time, for two reasons: 1) used oil hasn't been listed as a hazardous waste yet, and 2) if it is listed as such, the burden of these requirements will more than likely turn HMA producers to other fuels.

What is the difference between the "Permit-By-Rule" RCRA permit and the Part B RCRA Permit?

Substantively, there are almost no differences. The differences come into play with respect to notifying the public. The Part B permit requires advertisement of the application through newspaper ads and radio announcements, and a public hearing for the permit application. In the "Permit-By-Rule" scenario a company applying for the permit would not have to go public with its intentions. The "Permit-By-Rule" status is expected to reduce the amount of time EPA will take in processing the permit. There will be no interim status required. (Of course, if your HMA facility is located in a Community Right-To-Know state/county/city you will have to reveal that you are burning used oil/hazardous waste, regardless of the "Permit-By-Rule" exclusion of public notification.)

What are the requirements of the two permits?

The following information is taken from 40 CFR Parts 190 to 399, July 1, 1984. Unless otherwise stated, the information comes from Part 270, Subpart B—General Application Requirements.

Section 270.14 — Contents of Part B: General Requirements

1. A general description of the facility.
2. Chemical and physical analyses of the hazardous waste to be handled at the facility. In the case of used oil, the specifics of the analysis will be specified in the rule itself, and are expected to simplify compliance.
3. A copy of the waste analysis plan. The waste analysis plan includes the chemical and physical analyses of the waste. The waste analysis plan is to be in writing and will be the procedures which will be used to inspect and, if necessary, analyze each shipment of waste received

at the facility to ensure that it matches the description of the waste listed on the accompanying manifest or shipping papers. (Section 264.13, b & c)

4. A description of the security procedures and equipment required, or a justification demonstrating the reasons for requesting a waiver of this requirement. Basically the security requirements must be sufficient to prevent unknowing or unauthorized entry to minimize the possibility of persons or livestock being injured by the hazardous waste. (Section 264.14)

5. The facility must be inspected for malfunctions and deterioration, operator errors, and discharges which may be releasing hazardous waste constituents to the environment or posing a threat to human health. (Section 264.15(b))

6. A preparedness and prevention plan, or justification of any request for waiver(s) of the preparedness and prevention requirements. These requirements are that the facility is to be designed, constructed, maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment. (Part 264, Subpart C)

7. A copy of the contingency plan (this is not the same thing as the SPCC plans that are required for petroleum products). The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water. It must describe the actions facility personnel must take in the event of one of these accidents. (Part 264, Subpart D)

8. A description of procedures, structures, or equipment used at the facility to:

   - Prevent hazards in unloading operations;
   - Prevent runoff from hazardous waste handling areas to other areas of the facility or environment, or to prevent flooding;
   - Prevent contamination of water supplies;
   - Mitigate effects of equipment failure and power outages; and
   - Prevent undue exposure of personnel to hazardous waste.

9. A description of precautions to prevent accidental ignition or reaction of ignitable, reactive, or incompatible wastes. (See Section 264.17)

10. The vehicular traffic patterns for the facility site.

11. Facility location information. What county, township, etc., the facility is located in, and whether or not it is in a 100-year floodplain.

12. An outline of both the introductory and continuing training programs to prepare persons to operate or maintain the hazardous waste facility in a safe manner.

13. A copy of the closure plan and, where applicable, the post-closure plan. The facility must be closed in a manner that minimizes the need for maintenance and controls, minimizes or eliminates threats to human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, etc. (Section 264.111)

14. If the facility already exists, there must be documentation that a notice has been placed in the property deed, or that an appropriate alternate instrument has been used.

15. The most recent cost estimate for closure of the facility, plus a copy of financial assurance. (See Section 264.142 & 143)

16. The most recent cost estimate for post-closure of the facility, plus a copy of financial assurance.

17. A copy of an insurance policy or other documentation which demonstrates financial responsibility for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility. This means environmental impairment insurance, or setting aside company assets for such an incident.

18. Where it is appropriate, proof of coverage by a State financial mechanism must be provided. This means that if your state has authorization to run the RCRA program and sets up its own financial mechanism, it must meet an equivalency test set by the EPA. (Sections 264.149 and 264.150)

19. A topographic map.

20. If you store hazardous waste in containers (e.g., drums, etc.) the following additional information must be provided (Subpart B, Section 270.15):

    a. A description of the containment system, including its basic design parameters, dimensions, and materials of construction; how the design promotes drainage or how containers are kept from contact with standing liquids in the containment system; capacity of the containment system relative to the number and volume of containers to be stored; provisions for preventing or managing run-on; and how accumulated liquids can be analyzed and removed to prevent overflow.

b. Sketches, drawings, or data showing the locations of the buffer zone and containers holding ignitable, reactive, or incompatible wastes.

c. In areas where incompatible wastes are stored or otherwise managed in containers, a description of procedures used to prevent mixing and a reaction between the incompatible wastes must be included in the permit application.

21. If you store or treat hazardous waste in above-ground tanks, you must provide a description of design and operation procedures, including the following (Subpart B, Section 270.16):

    a. References to design standards or other available information used in the design and construction of the tank.

    b. A description of the design specifications of the tank, including identification of construction materials and lining materials.

    c. Tank dimensions, capacity, and shell thickness.

    d. A diagram of the piping instrumentation, and process flow.

    e. A description of feed systems, safety cutoffs, bypass systems, and pressure controls.

    f. A description of procedures for handling incompatible, ignitable, or reactive wastes, including the use of buffer zones.

If you are currently burning used oil, you should have notified EPA of this activity, with a separate application for each facility location by January 29, 1986 (if two facilities are located on the same property, you needed to file only one application for the property). This did not apply if you were not burning used oil on January 29, 1986. By the time you started burning used oil in 1986, you should have filed the application (that is, the Part A RCRA Permit Application, Form 8700-12). If, after reading this Special Report, you are considering abandoning the burning of used oil, I recommend that you continue for now. If the listing occurs, it won't happen until November 29, 1986. Until then, buy used oil and burn it. Just make sure that you burn it all up before the listing becomes effective, if it does. At least for 1986 you can continue to capitalize on the lower price of used oil.

I also recommend that you take extreme care in handling and storing the used oil. Make sure that the tank is not leaking, that there are no spills during delivery, and if there are, that they are cleaned up immediately and disposed of properly. Improper handling of used oil can always come back to haunt you, especially if it is listed as a hazardous waste.

Mr. STENHOLM. Thank you very much. Ms. Gunkel, has your association or have your association members had a problem with the recycled or the used oil that they purchased as far as the environmental qualities are concerned?

Ms. GUNKEL. In our industry, there appears to be two types of used oil. There is reprocessed used oil, which goes through processing and is cleaned up and then unreprocessed oil where somebody picks it up in one spot and drives it to the asphalt plant and dumps it into the tank.

We have had a lot of problems with the unreprocessed oil in the plants. The chlorine tends to form hydrochloric acid and tends to rust out the equipment.

So in our view, regulating the reprocessor can only help us and our equipment in the long run.

Mr. STENHOLM. Are there any other instances in which the end use product that you use would justify used oil being made a hazardous substance?

Ms. GUNKEL. I am not sure I understand what you mean, Mr. Chairman.

Mr. STENHOLM. What I am asking is have you or your association members had instances in which oil that was delivered to you might qualify as being a hazardous substance under the EPA listing or as they propose to make it?

Ms. GUNKEL. You are talking about reprocessed used oil?

Mr. STENHOLM. Either way in which product delivered to you has been or should have been classified as a hazardous substance.

Ms. GUNKEL. There have been instances where used oil has been received that has been adulterated with waste and it has resulted in poor combustion, the bags in the baghouse being coated with oil and replacement of all the bags in the baghouse, running $30 a piece, so it becomes very expensive, and that has occurred more times than I would like to count. The problem of adulteration with hazardous waste has occurred.

Mr. STENHOLM. You are giving an example in which the adulteration has caused damage to your facilities. What about environmental damage?

Ms. GUNKEL. Well, the description I got from that one instance was there was black smoke pouring out of the stack. If you don't get complete combustion, the burners are designed to burn at a certain level, and when you start putting in stuff the burner is not designed to burn, you do have pollutant problems.

Mr. STENHOLM. Which goes back to your testimony of how you and your association suggest that regulation should occur?

Ms. GUNKEL. To the reprocessor, yes; not on the burner.

Mr. STENHOLM. As we have heard all day long from others suggesting the same thing.

Ms. GUNKEL. Yes.

Mr. STENHOLM. Mr. Steigerwald, I found your statement very interesting to me. You were making the point that not all oils are the same and it is a fallacy to say all used oil is hazardous. That goes right to the heart of why these hearings are being held today and why we hope to take this input and somehow someway get EPA to listen.

Mr. STEIGERWALD. To the industrial sector, impact of anything that appears so to speak in the Federal Register—marketplace reaction is most of the time far more advanced than actual proposal or law, because in the marketplace now are issues of that nature.

You have industrial manufacturers that are reacting to the potential. We are spending a fair amount of time in our organization talking to these end users of the same problem. They are saying used oil is a hazardous waste and the reason they are saying that it is, merely comes from grapevine information based upon some proposed regulation that appears in the Federal Register and as a result there is an overreaction as well as to some degree of potential profiteering.

Based on our business of water-soluble metalworking fluids, disposal of spent fluid is handled basically either by the municipal system, by being hauled away to a viable treatment facility or to the larger industrial complexes across the United States who have the advantage of running an onsite waste treatment facility. They are far more advanced in handling that spent liquid as a result.

In the proposed listing of used oil where they do mention metal working fluids and then encompass every type that there might be, it is not even mentioned in the preamble. It happens to be kind of a catchall statement that appears.

The impact of the number of gallons that could potentially be termed to be hazardous waste is 2 billion gallons. There isn't a treatment facility nor are there enough treatment facilities in this United States to even handle that type of an issue, particularly when you are moving materials—you know, you have heard from various other areas today about moving materials, Department of Transportation, Department of Energy, all types of other issues that come into play—by moving that type of potential problem, the small businesses, those that today happen to be able to be either under the terminology of a small generator or at a small generator type, they today can in essence sell their waste, water-soluble oil-type products, but that is changing.

The cost of transporting or hauling costs has drastically gone up in the last 3 or 4 years and it is climbing today even more.

We spend 30 cents a gallon for our waste oil in Cincinnati, OH. We had the opportunity for some time to sell our waste oil and got paid for that. That happens to be the case in other areas also.

Now with the issue of used oil as hazardous waste, not only can we no longer sell that, the cost of hauling the particular waste stream by the small- and medium-sized organizations has drastically gone up. It is not uncommon to hear anything from 25 cents a gallon up to $1.50 a gallon.

The reference in my testimony is that eventually the cost of treating the waste of the particular industrial manufacturer will far exceed the cost of virgin products, and in the business community the costs that are associated with your operation, they end up finding a home somewhere. Those increased costs are eventually passed downstream.

The reference to the industrial sectors that I mentioned, I am talking about the rust belt industries—Mr. Chairman, from your State of Texas, the oil equipment industry, they are very distressed industries presently.

Increased costs of burdensome types of this nature that are really not defined with reliable data sources will end up causing just another incremental new cost to be accounted for in the process of their particular product lines.

Mr. **Stenholm**. I couldn't have said it better myself.

I have no further questions. I think I have exhausted my brain's capacity to ask questions today, but I think the testimony has been excellent, and we thank you for the patience you have shown today, 5 hours and 20 minutes, and I assure you this subcommittee will take this testimony and will develop it, and see that those who are now in conference on the Superfund have access to our interpretation of what you have said, just as I know you have been working with them individually.

The focus of this committee is the Small Business Committee, the impact on small businesses, of which we have a direct interest, and direct legislative responsibility, and I think the testimony that we have heard today shows that if regulations should end up being promulgated as EPA intended several months ago, that it will have a major detrimental effect on small business with very minimal positive impact on the consumer and the environment. That is what I have heard over and over today.

We thank you for your time.

[Whereupon, at 3:30 p.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

APPENDIX

APPENDIX A.--ADDITIONAL MATERIAL SUBMITTED BY VIC RASHEED, EXECUTIVE DIRECTOR, SERVICE STATION DEALERS OF AMERICA, INC.

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SSDA
SERVICE STATION DEALERS OF AMERICA

400 NORTH CAPITOL STREET N W
SUITE 175
WASHINGTON D C 20001
202 393 6868

VIC RASHEED
Executive Director

FURTHER COMMENTS OF THE
SERVICE STATION DEALERS OF AMERICA, INC.
ON
PROPOSED RULES ON
LISTING AND MANAGEMENT STANDARDS
OF USED OIL AS HAZARDOUS WASTE
BY THE
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

APRIL 9, 1986

OFFICERS
TRACY STANTON
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EMMETT PROBUS
Second Vice President
Louisville KY

DAVE HADDAD
Third Vice President
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RALPH YOUSSEF
Treasurer
Ellisville MO

DON SKILLING
Imediate Past President
Mill Valley CA

The Service Station Dealers of America (SSDA) welcomes this opportunity to respond to EPA's request for supplemental comments on its used oil proposals.

SSDA believes that the November 29, 1985, proposal to list all used oil as a hazardous waste has already done serious harm to the used oil recycling program.

The Service Station Dealers of America is now being besieged by calls from service station dealers in many states complaining about the growing unavailability of waste oil collection service.

Dealers who were receiving 25¢ per gallon for their used oil, are now being told that they are lucky to have it hauled away free of charge, but that they will be charged for all future collections.

Dealer Neil Rogers in Newport News, Va., has a 1,000 gallon storage tank for used oil collection and normally accepts used oil from 20-30 do-it-yourselfers each weekend from a nearby apartment complex. Recently his used oil collector told him, "You won't find anyone who will haul it away free after April 1," and "once your tank is full you will have to get rid of it." Also that, "Once it is declared a hazardous waste, no one will touch it."

His tank currently has 800 gallons of used oil in it which he will have to pay to have picked up. He must cease to accept used oil from the do-it-yourselfers but as a resident and avid fisherman, agonizes that they will get rid of the used oil by dumping it in trash containers etc., and oil will find its way into local wells and streams ... and into the fish he eats.

Massachusetts dealers are now facing charges of 10¢ per gallon for used oil pick-up. In our previous comments we pointed out to EPA that the Regulatory Impact Analysis bore little resemblance to the real world and was in fact grossly erroneous and misleading.

We also pointed out that your EPA's consultants had only de minimus contact with the generator community,. The only input the generator community had into the RIA was to respond to the questions: "(a) Could we accept a $1,300 a year in regulatory costs?" and "(b) Would insurance costs rise?"

Now EPA has given the generator community 30 days to generate hard data which EPA should have gotten before it proposed listing and management standards.

EPA apparently continues to believe, based on the statements at the January 16, 1986 hearing, that it has demonstrated that the used oil recycling system "can" be viable after listing and regulation.

Unfortunately for our members and the environment, EPA has not demonstrated that the system will be viable and, in fact, events since November 29, 1985 demonstrate that the used oil recycling program, particularly in the all important area of bringing D-I-Y oil into the system, is in grave jeopardy due to EPA's proposals.

The second area where we believe EPA has erred is in its reliance on The Franklin Associates study to come up with bald assertions such as: "Given that used oil contains hazardous substances and therefore is subject to Superfund liability, what is the incremental (insurance) cost associated with listing used oil as hazardous waste?"

EPA has also stated that if the petroleum exclusion does not apply, then used oil is subject to Superfund so, we the generator community, already have a Superfund problem.

SSDA takes strong exception to these statements by EPA.

First, The Franklin Associates study clearly points out that generators such as service station dealers are not adulterating their used oil.

In the preamble to the November 29, 1985 proposal, EPA notes that if used oil is adulterated,

> "in fact used oil is adulterated after leaving the generators' sites." [59 FR 49217]

EPA's own data, as well as studies done by others, show that the principal hazardous constituents found in used oil are not inherent in the used oil itself, but are the result of mixing hazardous waste and other materials with used oil.

We believe that unmixed used oil would rarely meet EPA's toxicity specifications, and further that this oil would probably meet the EPA Recycled Oil Fuel Specification.

The available data clearly indicate that used automotive oil differs from virgin oil only in metals that accumulate through use, primarily lead.

The Florida study [Aug. 30, 1985] indicates that used oil would not meet the toxicity standards for hazardous waste except for perhaps lead. Lead will be much less a factor as a result of the lead phasedown in gasoline.

SSDA would vigorously dispute any contention that the presence of these contaminants through use would remove used oil from the ambit of the petroleum exclusion to CERCLA.

The Franklin Associates report contains four (4) significant flaws:

1. Age of the samples

The study does not reflect current conditions in that metal levels in gasoline, particularly lead, are far less now than at the time of the sampling.

2. Use of only contaminated samples to determine mean contaminate levels for all used oil

Franklin Associates excluded samples which were uncontaminated, thus the mean contaminant levels shown are far higher than than those which exist in the real world.

3. New data indicate mean levels reported are not accurate

A new report done for API (American Petroleum Institute) indicates that the high mean level of contaminants was due to a few highly contaminated samples among the contaminated samples and thus the mean level report is greatly inaccurate with respect to the real world.

4. Real World Experience With Used Oil Has Indicated That It Is Typically Not Contaminated

Collectors and transporters have, in many cases, tested used oil collected from service station generators and found it not to be contaminated. Moreover, under the proposed management standards, used oil mixed with truly hazardous substances would count towards the small quantity generator limits of RCRA. Given that a typical service station will generate over 1,000 kg of used oil in a month, the net effect of contaminating used oil would be to write the small quantity generator rules out of existence for service stations. Thus, our used oil is currently not subject to Superfund in and of itself, and there are powerful disincentives to contaminate the used oil in the form of the proposed management standards.

RESPONSE TO EPA QUESTIONS

1. Superfund Liability As Impacting On Used Oil Recycling

Listing used oil as a hazardous waste would dramatically increase Superfund exposure for service station dealers, especially in light of the low 100 lb. (13 gallons) reportable quantity.

EPA states that generators face Superfund liability in cases where "used oil contains hazardous substances at levels exceeding those normally found in petroleum," or, in other words, that where petroleum exclusion would not apply Superfund liability would attach. Our experience is that such existing CERCLA exposure is minimal.

EPA's proposal marks a dramatic extension of Superfund to the ordinary recycling activities of service stations. In the unanimous views of SSDA's counsel and attorneys for our 43 state affiliates, our ordinary activities would not be subject to CERCLA but for the listing decision. If the matter were to go to litigation, a distinct possibility, SSDA has no doubt that EPA could not show that the petroleum exclusion would be inapplicable to ordinary used crankcase oil.

Even if our attorneys believed that the listing decision would not significantly increase dealer exposure to CERCLA liability and advised them accordingly, many dealers still simply would not handle used oil in any event, particularly do-it-yourselfer oil.

Many dealers simply are not going to increase their perceived risks even if counselled that the CERCLA exposure is not significantly increased.

Another key factor is the perceived risk of those parties who have exerted enough economic control over the used oil recycling industry to make continuance of our environmentally sound activity uneconomical.

Insurance, if available at all, will increase in cost as a result of the listing.

Secondly, oil company, jobber and independent marketer owners of service station facilities may decide that the environmental liability risks are such that continuing to market through full service locations which currently offer used oil collection facilities would be uneconomical, and thus conversion to a facility not offering service would be warranted.

EPA must understand that the majority of service stations in the country are independently operated, but the marketing facility is owned by a major oil company or jobber which leases it to the dealer, who operates it as an independent businessman.

Attached as an exhibit is data from the Lundberg Letter which shows that in 1981, 31% of the gasoline stations offered no bays, and thus had no used oil recycling facilities. That percentage has grown to 43% of those facilities today.

Listing used oil as a hazardous waste would provide a significant impetus to this trend and will result in fewer facilities being able to handle used oil in addition to reducing the number of facilities willing to handle used oil.

In any event, SSDA views the "perception" versus "reality" issue raised by EPA as a red herring. Even an all-out effort by the regulated community to deal with perception problems would fail to prevent drastic decreases in the number of facilities willing to handle used oil. Just as travellers continue to fear flying and many will avoid it, so will generators avoid dealing with hazardous waste.

In our industry, the listing will create a climate in which acceptance of do-it-yourselfer oil becomes too much of a legal and economic burden.

SSDA is putting EPA on notice that if it decides to list, the advice of our legal counsel and counsel to our 43 state affiliates is as follows:

A. That used oil generated off premises should not be accepted for collection under any circumstance.

B. Dealers should re-evaluate feasibility of continuing to offer oil change services in light of increased CERCLA exposure, increased regulatory costs, and continuing price discrimination by suppliers coupled with attendant loss of goodwill.

C. Constitutional challenges to statutes such as New York's, which require acceptance by dealers of used oil generated off premises, should be prepared for filing upon designation of used oil as hazardous waste.

D. Oppose state legislative initiatives to mandate acceptance of used oil generated off premises.

E. State affiliates must make every effort to advise membrs that if used oil is designated as a hazardous waste, ordinary, proper recycling activities become subject to Superfund reporting requirements and exposure to CERCLA is greatly increased.

SSDA submits that by listing used oil as a hazardous waste, EPA is truly going "where no man has gone before."

2. Listing Used Oil As Hazardous Waste Only Disposed Coupled With Retention of Management Standards

SSDA has several concerns with regard to listing used oil as a hazardous waste when disposed of, particularly with regard to potential non-CERCLA liabilities as discussed, infra.

SSDA believes that EPA has adequate existing authority under CERCLA and RCRA to deal with any problems posed by used oil recycling.

Problems with used oil recycling have not resulted from used oil itself, rather they stem from the mixing of used oil with true hazardous waste such as the dioxin mixing episode at Times Beach, Missouri.

The proposal to list used oil only when disposed of would still pose some of the same problems associated with stigmatizing used oil as a hazardous waste, albeit to lesser degree.

Another concern is the effect of listing even used oil when disposed on non-CERCLA liabilities as discussed infra.

If EPA lists used oil when disposed as a hazardous waste, there is an implication that used oil is hazardous in and of itself, which we do not believe to be the case.

Attaching the hazardous waste label to used oil could result in used oil recycling activities of generators being declared abnormally dangerous activities and thus subject to strict liability under common law.

SSDA believes that listing even used oil when disposed will unnecessarily disrupt the used oil recycling system. The true economics of this industry, as opposed to the "Alice-In-Wonderland" projections of the Regulatory Impact Analysis, are very delicate and disrupting them will result in more dumping by do-it-yourselfers.

EPA does not have to list at all; however, if EPA does list, the listing should be limited to used oil destined for disposal.

MANAGEMENT STANDARDS

SSDA has always taken the position that the key to the continued success of the used oil recycling system is the promulgation of management standards which protect human health and the environment. Protection of human health and environment requires that the uncontrolled dumping of do-it-yourselfers be addressed.

SSDA was disappointed in the Monday, March 10, 1986 notice in that it failed to address the problems faced by generators accepting used oil from do-it-yourselfers that may have been contaminated by the D-I-Y.

Under the proposed standards, when used oil becomes contaminated with true hazardous waste, the entire mixture becomes RCRA subtitle C hazardous waste and thus counts towards the small quantity limit under RCRA.

In the service station industry, the practical effect of having a "used oil mixture" count toward the small quantity generator limit would be to convert service stations to large quantity generators.

After reviewing the final small quantity generator rules published on March 24, we believe they are reasonable; however we do foresee considerable costs and difficulties for our members in complying wilth these rules. On the other hand, service stations would be overwhelmed by becoming large quantity generators.

We believe that special provisions need to be adopted to protect those dealers who continue to accept DIY oil. SSDA members can flood the Agency with incidents of where a do-it-yourselfer has attempted to pass off paint thinners, pesticides, and other toxic substances as used oil or mixed them into used oil brought to our members.

Dealers cannot test all used oil into their stations. Usually visual and olefactory inspection is all a dealer can do to check used oil presented by a DIY for contamination. Our members are concerned that acceptance of DIY oil may contaminate the mixture to an extent where the mixture may become RCRA subtitle C hazardous waste.

While EPA states its data does not indicate a problem in this area, that assurance does little to assauge SSDA concerns and means nothing to the dealer on the firing line.

It is a fact life that many DIY's utilize used oil as a vehicle to dispose of other substances. if our members, who handle 67% of the DIY oil that is recycled, are to continue to handle this material, our RCRA small quantity generator concern must be addressed. SSDA offers the agency all possible cooperation towards this goal.

3. Increased Insurance Costs

SSDA would like to point out to the Agency that we are in the process of doing an insurance survey of our members in conjunction with EPA on other matters.

SSDA also takes exception in the strongest possible terms to the statement, "Given that used oil contains hazardous constituents and therefore is already subject to Superfund," what would the incremental (insurance) costs be?

We have pointed out tht this industry has never operated on the premise that our typical activities posed any CERCLA risk, nor have insurers operated on that basis. We have further pointed out that the "perception vs. reality issue" raised by EPA is a red herring. Insurers operate on the basis of perceived risks, and EPA's proposals dramatically increase them.

Based on our own surveys, we have found that the primary effects of the proposed listing decision have been (1) to render insurance unavailable at all, (2) notifications to dealers that motor oil activities are included in the pollution exclusion activites of existing policies, and (3) the universal use of pollution exclusion riders to dealers' general garage liability policies.

The net effect appears to be to render insurance unavailable, and where it is available, to exponentially increase costs.

EPA's proposals have not just imposed incremental costs; they have rendered insurance unavailable for the generator community for all practical purposes.

Moreover, the increased insurance cost of collectors, transporters, and other upstream persons in the recycling chain, have already affected generators in the form of less capability to handle used oil, price paid for used oil, and generator willingness to handly used oil generated off premises (DIY oil).

The story of South Carolina Exxon dealer, Butch Taylor, is illustrative.

Prior to EPA's proposals, Mr. Taylor was an active participant in South Carolina's program to encourage recycling of used oil by DIY's. Among other things, he had had a sign posted indicating his willingness to accept DIY oil.

Mr. Taylor had received a small payment for his oil of up to 25¢ per gallon. Recently his collector told him that he had to sell one of his trucks in order to finance his insurance premium which was dramatically increased in light of EPA's proposals. Further, due to these costs, his collector told him although he should be charging him for used oil collection, he would accept Mr. Taylor's oil on a no-charge, no-pay basis because he had been a good customer for fifteen years.

Mr. Taylor has since returned his used oil collection center signs and no longer accepts DIY oil.

Mr. Taylor's case brings out yet another major flaw in the Regulatory Impact Analysis.

Based on extensive discussions with our affiliates, it appears that the impact of the listing will be a dramatic decline in the number of used oil collectors which will be disproportionately felt in rural areas.

Our point is that increased costs on the upstream recycling chain, including insurance costs, are already destroying the used oil recycling system and demonstrate why EPA must announce a decision not to list as soon as possible.

4. Non-CERCLA Liabilities

Used oil recycling activities have not posed a major liability problem for service stations because the problems in the chain have not been at our level.

SSDA has previously pointed out how even those states which list used oil as hazardous waste and have clean-up liability statutes, have schemes which are totally different from CERCLA. We pointed out that under the New Jersey Spill Control Act, liability is imposed on the discharger, whose identity is determined under a reasonable-man standard, in contrast to the CERCLA meataxe approach.

In short, we believe that the listing decision imposes new liability problems on our industry where none existed before.

In SSDA's view a key question that must be answered is whether listing used oil as a hazardous waste only when disposed of would alleviate the problems of potential CERCLA liability.

If CERCLA were to attach to used oil only at the time of disposal, it is then arguable that the liability would attach to the discharger as it does under New Jersey law.

For example, assume a case where a service station dealer gives used oil to a collector who is licensed under the management standards, and the dealer otherwise complies with the management standards. Unbeknownst to the dealer, the collector decides rather than take the oil to a RCRA permitted facility, as he represented to the dealer, he will dump the oil.

CERCLA liability would then attach beginning with the collector who disposed of the oil. Since CERCLA was not applicable at the time it left the dealer's station, he would now have a defense to CERCLA liability which would otherwise be precluded due to the contractual nexus between the dealer and the collector.

If this interpretation of the law under a decision to list used oil only when disposed of is correct, then liability standards would be similar to existing state liability statutes and would not be overly onerous.

As stated supra, SSDA is concerned with the impact on liability under state common law if used oil is listed when disposed. If used oil is listed as a hazardous waste when disposed of, there is an implication that used oil is hazardous in and of itself.

The effect of liability under state common law is that strict liability could be imposed on used oil recycling activities on ground that they constitute abnormally hazardous activities.

In the area of leaking underground storage tanks, Maryland and Colorado have imposed strict liability on owners and operators of underground tanks on grounds that tank operation is an abnorally hazardous activity. Yommer v. McKensie, 275 A.2d 138 (Md. 1969) and City of Northglenn v. Chevron U.S.A., 519 F.Supp. 515 (D.Colo. 1981).

Our concern is that while most petroleum pollution cases have adopted a negligence standard, (see, e.g. Bonneau v. Martin Oil Co., 393 A.2d 9011 (Pa. 1978) listing even used oil when disposed of could change this standard.

5. Effect on Burners

SSDA would simply reiterate to EPA that used oil recycling is a chain. It appears that the perceived risks caused by the designation of used oil as a hazardous waste will cause many burners to cease using it, thus foreclosing a major market for used oil and rendering the entire system uneconomical.

6. Impact Of Listing On Service Stations

SSDA believes that this issue has been briefed ad nauseum in its previous comments.

With regard to the cost impact of the management standards, SSDA submits that re-evaluation of the storage tank proposals is in order as stated earlier.

SSDA would admonish the Agency that the costs of compliance with the management standards must be viewed in context of the unprecedented costs of environmental compliance being placed upon the service station industry.

In addition to the small generator requirements under RCRA, we are faced with underground tank regulation, possible Stage II vapor recovery, as well as this proposal. We believe the regulatory burden being placed on our industry has reached the breaking point.

We are submitting as part of our testimony a copy of the new Small Business Administration study on costs of RCRA compliance for a service station. We would point out a significant error in the estimation of time available to a station operator to amortize these costs.

A typical service station dealer operates his location pursuant to franchise governed by the Petroleum Marketing Practices Act, (PMPA) 15 U.S.C. 2801 et seq. The typical franchise term is 3 years.

In the unanimous view of the commentators, PMPA provides a dealer with little protection against termination or non-renewal of his franchise. See, e.g., "Judicial Interpretation of the Petroleum Marketing Practices Act," 32 Emory L.J. 273 (1983).

This is one of several reasons why dealers can typically obtain loans of only 3-5 years to cover costs of RCRA compliance. The true costs will be far higher than even SBA projects.

With regard to actual data on the number of stations that will drop oil changes, we cannot yet say; however, EPA must recognize the effects of continuing price discrimination, overall reaction to environmental over-regulation, as well as the far greater awareness of the new risks and liabilities EPA is putting on our industry.

In terms of unwillingness to accept used oil from DIY's, we can say that the willingness of dealers to accept it will be directly proportional to their awareness of the EPA proposals. Moreover, the small quantity generator regulations will awaken our industry as never before to our environmental problems.

Given the new consequences under CERCLA, the threat of DIY contamination making service stations large quantity generators under RCRA, and the destruction of recycling channels caused by EPA proposals, we would expect at least 30 million gallons of the 37 million DIY gallons per year recycled through services tations to end up being dumped, in addition to the additional DIY market share caused by the proposals.

IMPACT OF STATE LISTING DECISIONS

SSDA briefed this issue in our earlier comments which are attached as an appendix and incorporated by reference.

We would again remind the Agency that the regulatory and legal frameworks in those states which have listed are far different from what would exist under these proposals, therefore any "apples and oranges" comparisons are invalid.

With respect to DIY oil we would point out that New Jersey requires service stations to accept DIY oil, while exempting stations collecting 1,001 gallons per month of used oil, from regulation.

We again point out SSDA and its affiliates will challenge the constitutionality of such statutes in the event of a listing, or if EPA fails to address the issue of DIY contamination causing service stations used oil to count towards the RCRA small quantity generator limit. (See New York statute attached.)

The RCRA small quantity generator problem does not exist in any state. SSDA respectfully suggests that the Agency specifically exempt all used oil from counting towards the small quantity generator limit.

CONCLUSION

With few exceptions, the used oil recycling system has worked well. In those few cases where the system has broken down, such as Times Beach, the Agency has had the ability to quickly and effectively respond.

SSDA offers the full and unequivocable support of itself and its 60,000 members in order to expand environmentally sound recycling activities. SSDA has already begun to work with EPA on a DIY educational campaign. Achieving this goal will require many more collection facilities than presently available. Given that the number of services stations having the capacity to collect used oil is dwindling and that service stations already handle two-thirds of the DIY oil that is recycled, more collection facilities will be needed.

To this end, SSDA makes the following suggestions.

1. Do not list used oil as a hazardous waste.

2. If used oil is listed, confine the listing to used oil when disposed of.

3. Raise accumulation limits for small quanity used oil generators to 1,001 gallons generator per month.

4. Drop reference in small quantity used oil generator regs that limit the total amount accumulated over time.

5. Drop proposed standards for used oil storage tanks.

6. Specifically exempt all used oil from counting towards RCRA small quantity generator requirements to ensure continued acceptance of DIY oil.

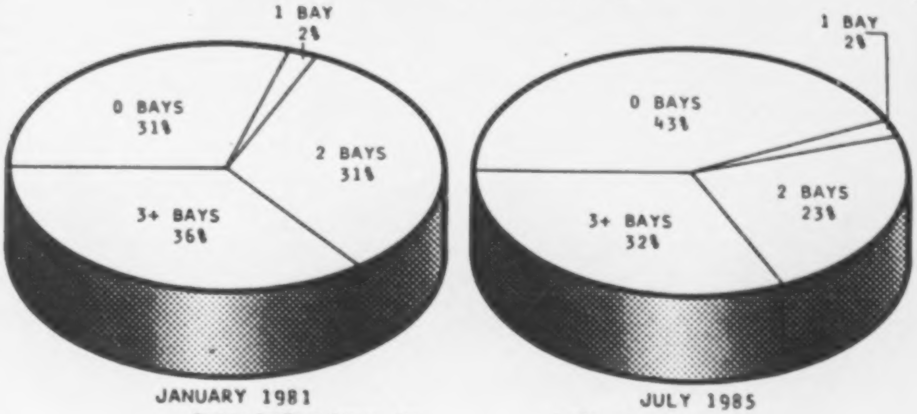
7. Raise mixture limits to account for possible contamination of oil by DIY's.

8. Propose strict warning labels on motor oil containers.

9. Require establishments selling over a certain amount of motor oil to provide collection facilities for that oil.

10. Increase participation of the regulated community in the process before regulations are proposed.

SHARES OF SERVICE BAY OCCURRENCE CATEGORIES IN U.S. RETAIL
GASOLINE NETWORK, 1985 vs. 1981



Source: Lundberg Survey, Inc. *Lundberg Letter Chart*

GASOLINE MARKETERS REVISING SOCIAL NORMS

TWO DECADES AGO, when American motorists could expect to find one or more gasoline stations offering automotive service, minor repairs, and accessories on most important intersections, they were well accustomed to shop the whole community for groceries, newspapers, bakeries, sundries, and various consumer services in a series of additional stops. They restored their cars overall, then themselves, piecemeal.

Today, many motorists increasingly find one or more self-serve gasoline outlets per main intersection, increasingly with associated convenience stores, where they fuel up and can also purchase groceries, snacks, and just about anything else other than tires, batteries, accessories, and auto service. Their groceries and sundries shopping done, they thereafter set out to search for various auto-related specialty shops, department stores and discount houses to do the piecemeal maintenance of their cars.

> Such is the widening gap between fuel sales and auto aftermarket activity that more and more motorists must make more or less educated guesses as to which type of vendors of auto goods and services to choose -- before finally choosing among options. Increasingly, this process is not related to replenishing fuel.

The graph above illustrates how the network has changed as to service bay occurrence according to national Lundberg Surveys of January 1981 and July 1985. January 1981 is chosen because it was the month of complete oil industry decontrol, at which time operating costs were on the rise while consumption was not. The greatest change is in the percentage of outlets with no bays: 43%.

Oil Week

RECEIVED FEB 1 8 1985

inside report on trends in petroleum marketing without the influence of advertising

SBA study reveals

Here's how much EPA regs could cost your business

You could pay at **minimum** tens of thousands of dollars a year for the next 30 years complying with Environmental Protection Agency petroleum regs.

That's what a Small Business Administration analysis of EPA's proposed gasoline tank, used oil and "hazardous waste" reg options shows.

The SBA gave the study to EPA last week to show the regulators how tough the combined impact of the regs would be on the typical gas station.

However, one marketer attorney told Oil Week that the SBA study, if anything, actually paints a rosy picture of the costs to a typical marketer.

The SBA study repeats EPA assumptions that

(Continued on page 2)

EPA reg costs. . .

marketers could spread their costs over a 30-year period. In fact, marketers typically ... only be able to get loans of, say, ...e, four or five years to pay for the costs of complying with proposed EPA regs, the attorney points out.

Thus, if a more-realistic five-year timeframe were used, the size of the dollar figures in the SBA report would be a lot bigger and probably have a bigger impact on the regulators.

The chart below shows how much SBA estimates it would cost the typical marketer to comply with various EPA regulatory options. The first six options assume annual costs spread over 40 years, at 7% cost of capital. The "secondary containment" option assumes 30 years of costs at 13% cost of capital, and the "tank replacement" option is over 20 years at 13% costs of capital. —Jack Peckham

What EPA regs Will Cost A Typical 3-Tank Gas Station Each Year

EPA reg options	Gasoline, used oil & spent solvent reg costs				Gas tank Costs alone
	oil/solvents above-ground		oil/solvents in underground tank		
	Nonleaking Tanks	Leaking Tanks	Nonleaking Tanks	Leaking Tanks	
Inventory Control	$4,596	$5,652	$6,225	$7,281	$3,254
Semiannual Tank Tightness Test	5,526	6,582	7,155	8,211	4,189
Quarterly Ground-Water Monitoring	4,843	5,899	6,072	7,128	3,101
Vapor Wells (continuous)	4,281	5,337	5,910	6,966	2,939
Pollulert	3,373	4,429	5,002	6,058	2,031
Observation Wells Quarterly Weekly	 2,003 6,403	 3,059 7,459	 4,432 8,032	 5,488 9,088	 1,061 5,061
Secondary Containment	17,159	18,635	19,208	20,264	16,237
Tank Replacement	10,303	11,359	11,932	12,988	8,961

SSDA
SERVICE STATION DEALERS OF AMERICA

400 NORTH CAPITOL STREET N. W.
SUITE 175
WASHINGTON D. C. 20001
202 393 6868

VIC RASHEED
Executive Director

COMMENTS OF THE

SERVICE STATION DEALERS OF AMERICA, INC.

ON

PROPOSED RULES ON

LISTING AND MANAGEMENT STANDARDS

OF USED OIL AS HAZARDOUS WASTE

BY THE

UNITED STATES

ENVIRONMENTAL PROTECTION AGENCY

FEB. 8, 1986

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SUPPLEMENTAL COMMENTS OF THE SERVICE STATION DEALERS OF AMERICA

The Service Station Dealers of America (SSDA), a trade association representing 60,000 service stations, is filing these comments as a supplement to its comments presented at the EPA hearing in Washington, DC, on January 16, 1985.

At that time, SSDA indicated that it would be extending its remarks as it had more time to analyze the contents of the Regulatory Impact Analysis (RIA). After a preliminary review of the RIA, SSDA felt it was so fundamentally flawed that reliance on it in promulgating management standards for used oil would be totally unwarranted.

A more detailed analysis of the RIA has led us to conclude that our preliminary analysis was correct, and that the RIA provides a totally inadequate and misleading perspective on the economic impact of the proposed regulations on recycling.

Not only is the cost analysis fatally flawed, the benefit analysis is based on the false assumption that recycling activities will be minimally impacted and may in fact increase. Many other incorrect assumptions underlie the RIA as discussed more fully, _infra_.

SSDA is also concerned that EPA has interpreted the legislative history of the used oil amendment to RCRA as a mandate to discourage recycling activities that lie outside the scope of Congressional concerns exposed during the deliberations on the amendment.

Finally, EPA appears to have concluded that recycling activities have not been adversely impacted in the four states -- California, Massachusetts, Missouri, and New Jersey -- which have declared used oil as a hazardous waste. Since the January 16, 1986 hearing, SSDA has engaged in extensive discussion with the appropriate state agencies, as well as SSDA members in those states. Based on those discussions and our analysis of the relevant state statutes and regulations, we have discovered that the legal and economic environment that exists in those states is markedly different than that which would exist if EPA adopts its proposals as a national rule. Perhaps Massachusetts comes closest to resembling how the federal system would develop under the proposals. Massachusetts service stations are now having extreme difficulty having their used oil picked up, and even if it is picked up, these dealers must pay up to 10 cents per gallon to have it collected as opposed to making a small profit.

Moreover, dealers absolutely refuse to accept used oil from do-it-yourselfers, as it has become an economic and legal burden as opposed to a recyclable resource. Massachusetts officials have told SSDA that the state is taking another look at its regulation of used oil and that some modification may be forthcoming.

SSDA believes that the perception that used oil recycling has not been adversely impacted by a state decision to list used oil as a hazardous waste, and thus a federal decision to list would also not adversely impact, is unjustified.

I. FLAWS IN THE REGULATORY IMPACT ANALYSIS

At the outset, SSDA would like to point out that the Regulatory Impact Analysis could have been significantly improved to the point of actually being accurate, had the consultants bothered to do more than de minimis consultation with the generator community. The RIA candidly admits that "generator reaction cannot be gauged and may significantly alter the entire analysis." SSDA feels that the RIA could have provided EPA with much better guidance in this all important area.

SSDA finds several fatal flaws in the RIA's analysis of the economics of the used oil market. They include the following:

1. A grossly mistaken analysis of trends in prices of crude and virgin oil prices. (IV-25)
2. Failure to adequately consider the effect of regulatory costs on transporters, end-users, and other persons upstream in the recycling chain and how these costs will be passed on to generators, thus rendering used oil recycling uneconomical. (IV-4)
3. Citing the price as paid by collectors to generators as ranging from 10 to 30 cents per gallon. Our own survey indicates

that in some areas dealers are actually paying to have used oil collected, others receive no payment at all; the current maximum appears to be 10 cents per gallon. This price will certainly fall as the regulatory program takes effect.

4. Excessive reliance on the assumption that re-refiners will have more oil available to them after regulation, and will be able to grow at the rate of 45% annually. (IV-22) If more oil were going to be going to re-refiners, (a proposition we strongly dispute) then why does the RIA fail to take account of the fact that "[e]conomics of re-refining constrain price that they (re-refiners) can pay for used oil to a level substantially below that which can be paid for used oil going into fuel markets." (IV-18) If more oil will go from generators to re-refiners, then the price paid to generators will fall.

5. Analyzing the financial impact on generators in terms of the overall profitability of the generator (IV-27). This is taking a macroeconomic approach to the microeconomic problem of the effect on profitability of the used oil component of the generator business. The RIA totally fails to take into account the fact that generators for whom used oil recycling is only a small part of their business WILL CEASE RECYCLING ACTIVITY should the costs and/or PERCEIVED RISKS of continuing used oil recycling become too great as they will under the proposed listing and management standards. The RIA notes in passing that "small generators may bear some indirect regulatory costs in the form of lower prices received for their used oil." (IV-27)

   In SSDA's view the combination of these indirect but very significant costs, together with declining virgin oil prices will render recycling activities uneconomical for our industry irrespective of the direct regulatory costs.

6. The abject failure to consider other indirect costs of regulation such as increased insurance costs if used oil is listed as a hazardous waste, costs to consumers in the form of reduced availability of oil changing services, and the environmental costs due to increased do-it-yourselfer market share together with the attendant dumping.

7. The benefit analysis is based on the false underlying assumption that recycling will be minimally impacted by the listing decision. It makes no analysis of the risks caused by increased do-it-yourselfer dumping. The benefit analysis performed is an empty academic exercise that does not comport with the real world.

II. IMPACT OF LISTING DECISIONS AND MANAGEMENT STANDARDS IN OTHER STATES

SSDA research since the Janury 16, 1986 hearing reveals only four (4) states which have listed used oil as a hazardous waste: California, Massachusetts, Missouri, and New Jersey. SSDA has made extensive contacts with the appropriate regulatory bodies in those states, has had extensive discussions with counsel for those agencies, and has spoken with service station dealers across the affected states.

At the hearing in Washington, EPA seemed to believe that a listing decision had not had an adverse impact on recycling activities in those states; therefore, a national listing decision would also not adversely impact recycling. This "apples and oranges" comparison is invalid for several reasons.

First, the legal standards of potential liability are different in the listed states than the standards which would be applicable under CERCLA. Specifically, based on our reading of the applicable statutes and discussions with counsel of the appropriate agencies, defenses to liability that are precluded under CERCLA would be available under state law.

For example, under the New Jersey Spill Control Act, 58 N.J. Stat. Ann. 58:10-23.11 et. seq., liability, although strict joint and several, is imposed on the discharger, i.e., the direct discharger or someone otherwise directly responsible for the discharge under a reasonableness standard. In other words, if under the facts of the case it would not be reasonable to classify the generator as the discharger, liability would not attach to the generator under New Jersey law.

By contrast under CERCLA, a generator who has done everything humanly possible would still be subject to liability and would not have a defense against upstream persons responsible for the harm due to the contractual nexus between them.

In Missouri, under 10 Mo. Admin. Code 25-11.010 et seq., a generator is required to contract with a licensed transporter of used oil. Thus, state law in effect requires a generator to give up the "solely caused by a third party" defense under CERCLA, whereas this defense would exist under state law.

Aside from the fundamental unfairness of subjecting generators to potential liability for upstream recycling activities they have no knowledge or control over, a federal listing decision would adversely impact litigation against generators based on state common law grounds.

In short, the legal implications are far different for a federal listing decision than they are under existing state laws.

A second consideration is the degree of awareness of the legal limplications of a federal as opposed to state listing decision. In speaking to dealer groups and their attorneys in the affected states, it appears that while they appreciate the potential liabilities under CERCLA, they simply were unaware of any potential liability for used oil recycling activities under state law. There seems to be a direct correlation betwen the level of awareness and willingness to engage in recycling activities, including acceptance of oil from do-it-yourselfers, i.e., the more aware a generator was aware of potential liabilities, the less willing he is to deal with used oil at all. It appears that in this situation, ignorance is bliss.

A third factor differentiating a state and federal listing decision appears to be that the oil may be transported to other states which impose less burdensome requirements than the four listing states.

Finally, a federal listing decision would create the perception of far greater risk to insurers than the state listing decisions; thus, a federal listing decision would cause a far more severe economic impact than the state listing decisions. It appears that insurers, as well, are unaware of potential liability in the listing states. In any event, a federal listing would bring catastrophic economic consequences and cause used oil recycling to grind to a halt.

III. STATE MANAGEMENT STANDARDS

A common criticism of EPA's proposed management standards by the states agencies contacted by SSDA is that they are much more onerous than those imposed by the states which list.

Common threads in the state management standards seem to be:

1. Burden of regulations on collectors and transporters.
2. No imposition of onerous container standards for used oil.
3. Special consideration given to service stations and other small generators, in order to encourage handling of do-it-yourselfer oil.

A. BURDEN OF REGULATIONS

EPA appears to be taking the same realistic approach to used oil management standards that the states have been taking in that the burden of regulation falls on the upstream actors in the recycling chain.

The state agencies which currently regulate used oil as a hazardous waste have indicated to us that they have serious reservations concerning EPA's management standards, as they believe the proposal is far more burdensome to the generator community than what the states are currently doing.

A prime concern of SSDA is the small quantity used oil generator threshold, which is far too low. Based on our post-hearing research, SSDA now believes that the vast majority of its members would not qualify as small quantity used oil generators. SSDA is now of the view that the small quantity generator limit should be set at 1001 gallons per month and that the limitation on accumulation be dropped altogether.

Important regional differences exist in accumulation practices of service stations and other small generators. In the "frost belt" used oil is often used by service stations as fuel for heating.

Service stations must often store enough used oil to last them through the winter season, and will accumulate well over 300 gallon threshold in the proposal.

The use of used oil as a fuel is one major reason why the decision of Massachusetts to list used oil as a hazardous waste cannot be used to justify a federal listing decision. This alternative use has helped soften the blow of that listing decision, yet would not be a factor in assessing consequences of a national listing decision. One does not have space heaters in Florida or Hawaii.

SSDA therefore strongly urges the Agency to raise the small quantity generator threshold to 1001 gallons per month and either drop the accumulation limit or raise it to a realistic level.

With regard to the management standards themselves, SSDA strongly urges the Agency to seriously consider the comments of Missouri and other states which are currently regulating used oil. Dealers have not encountered serious difficulty in complying with the Missouri regulations.

B. TANK AND OTHER CONTAINER STANDARDS

EPA is proposing to impose an interim prohibition standards on used oil tanks of both small and large quantity generators. The only proffered justification is the naive and absurd assumption in the RIA that used oil tanks pose identical problems and risks as underground gasoline storage tanks. At the January 16th hearing SSDA noted it is not aware of a SINGLE incident of groundwater contamination from used oil tanks. Despite our extensive efforts we still are not aware of any such incident.

Interestingly, with the possible exception of California, none of the four states currently regulating used oil are even considering requirements such as cathodic protection or secondary containment. The states recognize that used oil is very different from hazardous wastes and while regulating hazardous waste containment, they view used oil tank regulations as counterproductive.

SSDA believes that no benefit would occur from imposed strict new tank standards, whereas the costs are sufficient in and of themselves to destroy used oil recycling today, a decline which will be greatly accelerated if EPA adopts its proposals.

Congress in adopting RCRA admonished EPA that excessive regulatory costs would make used oil too burdensome a load for the small business community to withstand.

SSDA urges the Agency to heed the Congressional admonition, recognize the unique nature of used oil as the states have done, and not create a climate in which recycling will be ended.

C. SPECIAL CONSIDERATIONS GIVEN TO SERVICE STATIONS AND OTHER FACILITIES WHICH TRADITIONALLY PROPERLY RECYCLE OIL

In those states which have listed used oil as a hazardous waste, special consideration has been given to service stations and other entities which traditionally recycle their used oil.

The prime example of this is in New Jersey, where service stations may accumulate or generate up to 1,001 gallons of used oil per month and are specifically exempt from regulation.

New Jersey and other states, as well as Congress, have recognized the uniqueness of used oil and the need to insure proper recycling.

Unlike hazardous wastes, used oil is generated primarily not by industry, but by households.

According to industry sources, 821 million gallons of motor oil were sold in the United States in 1985. Of this total, 574.7 million gallons, approximately 70%, was sold to do-it-yourselfers. The DIY's will burn 162.6 million gallons, and will dispose of 412.1 million gallons. (This figure is based on the ratios of burned to disposed oil contained in a 1981 DOE study.) In other words, almost one-third of the used oil universe will have to be disposed of by do-it-yourselfers!

Used oil presents a unique regulatory problem and must be treated as such, not as a garden variety hazardous waste.

IV. MISCELLANEOUS CONCERNS

In our research, we have discovered that many state dealer associations perform a sort of broker function in that they arrange for pick-up of used oil at their member stations. They are unwilling to continue to provide those services if regulatory duties or costs or potential liabilities would attach. SSDA would appreciate a clarification of the status of our state associations under the proposals.

Finally, the proposals have thrown the status of programs to encourage DIY recycling into chaos. Our members are very concerned that since they have no idea what a DIY may put into oil brought to a service station, they should not accept it, particularly in light of the fact that mixing could cause the oil to count towards the RCRA small quantity generator limit.

Although EPA indicates that its samples do not show a problem in that regard, SSDA members take strong exception to that proposal and view it as calling into question the validity of the samples taken by EPA. SSDA members wish to expand their recycling activities. We are willing to work with the Agency to this goal.

If used oil is to be regulated in a fashion that is protective of human health and the environment, the issue of DIY dumping must be addressed.

Unfortunately, the management standards proposed by the Agency would not only make acceptance of DIY oil uneconomical, it would also cause many stations to discontinue offering oil change services.

SSDA has previously pointed out to EPA how the two-tier pricing structure set up by major oil companies has encouraged DIY oil changes because consumer retail prices are often one-half a dealer's "wholesale" price. Major oil companies refuse to allow dealers to make volume purchases of motor oil at competitive prices on grounds that DIY and service station markets are separate and distinct. They are able to maintain this system due to the fact that a dealer is a captive customer.

The net result is that dealers must charges prices for oil and oil changes that many customers consider a rip-off. This causes a significant loss of customer goodwill that many dealers would just as soon be rid of, given the marginal profits of oil operations. EPA's proposals will give thousands of service station dealers the excuse they need to take this course of action.

Finally, our most significant concern is that the Agency appears to have been (mis)advised that it can view the listing decision in a vacuum, wholly separate from the management standards.

A decision to list would bring used oil recycling, particularly that of crankcase oils, crashing to a halt, irrespective of how lenient the management standards are. The recent Ohio episode is but the first step in the ultimate crash. This result is in complete derogation of Congressional intent.

SSDA offers the full and unqualified support of itself and its 60,000 members in working with the Agency to develop used oil management and recycling standards that will expand environmentally sound recycling activities. The November 29, 1985 proposals would not have this result.

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SERVICE STATION DEALERS OF AMERICA, INC.

400 N. CAPITOL STREET, N.W. • WASHINGTON, D.C. 20001 • (202) 393-6888

ATTACHMENT I

REACTION TO EPA PROPOSAL

Oil Recycling Program

Interested in making some extra money *and* helping to solve a serious pollution problem?

According to the Environmental Protection Agency, each year over 350 million gallons of used crankcase oil are disposed of improperly. That means it is dumped into sewers, down drains, into the street, or just dumped on the ground. The vast majority of this oil comes from the do-it-yourself mechanic who changes his or her oil at home.

The environmental consequences of this dumping are enormous: waste oil pollutes our drinking water and it kills wildlife. Besides, oil is a valuable resource that can be recycled and need not be wasted.

The Council on Hazardous Materials, a non-profit citizens' group, NOPRA and Speedy Oil Services are launching Operation P.O.U.R. - Project Of Used Oil R ng.

The purpose of this program is to establish a broad dvertised oil recycling program for
the do-it-yourself mechanic in the Greater Clevelan

We are asking NOPRA members to designate d oil collection stations for home
mechanics. The locations of these stations wi and radio stories and through
brochures distributed to retailers.

We also encourage participants Speedy is an oil re-refining
company which produces new lu

The advantages for deale

- people will brin ney
- you will be ing a valuable resource
- your sta a coverage and brochures and
  when p
- your rep.

All you need to ed crankcase oil. For your protection the
amount of oil accept stricted to three gallons.

For a $5 registratio. Materials will furnish you with a large sign for
display in your window ection Station." Your name will be added to the list
of participating stations a. brochures.

If you are interested ca ne today 961-4646 and ask for Bob Staib.

CANCELLED
DUE TO
EPA PROPOSAL

OPERATION P.O.U.R.

I would like to provide a collection station for used oil.

Name of Station______________________________

Brand of fuel (if applicable)______________________________

Address ______________________________

____

Name ______________________________

Please include $5 registration fee.

Return to: Council on Hazardous Materials
4115 Bridge Ave.
Cleveland, Ohio 44113
Phone: 961-4646

Before You Sign **Before You Agree**	**CALL NOPRA** **524-0220**

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ATTACHMENT II

USE AND DISPOSAL OF MOTOR OIL

USE AND DISPOSAL OF MOTOR OIL - 1985

MOTOR OIL CONSUMPTION IN THE UNITED STATES - 1985
(millions of gallons)

	Total	DIY	Non-DIY
Oil Purchased	821.0	574.7	246.3
Burned/Leaked	233.7	162.6	63.1
Drained	597.3	412.1	183.2

DIY = Do it yourself oil changes
Figures based on oil consumption
in 1984 National Petroleum News Factbook,
and ratios of burned/leaked and drained oil
to total oil purchased in 1981 DOE study.

DISPOSITION OF USED MOTOR OIL BY DIY'ERS - 1985

(Total - 414.1 million gallons)

I. Poured on Ground (40%) = 164.84 million gallons
II. Put in Trash (21%) = 86.54 million gallons
(If trash is taken to landfill, this amount should be added to amount poured on ground)
III. Taken to Service Station or other recycling outlet (14%) = 57.69 million gallons
Service Station total (19%) = 37.09 million gallons
IV. Oil Burned (4%) = 16.48 million gallons
V. Miscellaneous Uses (25%) = 103.03 million gallons

Sources: National Petroleum News Factbook
DOE

KEY FACTS ON WASTE MOTOR OIL

- Of all petroleum-related pollution in the United States 62% is estimated to be used lube-oil, much of which eventually works its way to the ocean.

- Surveys done by DOE indicate that people who have heard about recycling programs, are three times as likely to dispose of used oil by taking it to a gas station or giving the oil away for recycling.

- Do-it-yourselfer's properly recycle only 14% of the waste oil they generate.

- Of the 821 million gallons of motor oil sold in the United States in 1985, over 70% or 575 million gallons will be purchased by do-it-yourselfers.

- Based on DOE figures, we can expect about 161 million gallons to be burned or leaked, with the balance of 414 million gallons to be drained.

- Of the 414 million gallons only 58 million gallons will be recycled, leaving 356 million gallons to be disposed of.

- Of this 414 million gallons, 40% or 165.6 million gallons will be dumped directly on the ground.

- Another 21% or 87 million gallons will be put in the trash or garbage, where if taken to a landfill, will end up in the nation's groundwater.

- Another 25% or 103.5 million gallons will be used for miscellaneous purposes such as spreading on roads to restrict dust or to kill weeds, and may eventually end up contaminating the environment.

- DIY'ers are three times as likely to recycle oil if made aware of a recycling program. 72% of the DIY'ers state they would always, (57%) or usually, (15%) recycle the oil if the place they bought the oil had collection facilities. 75% state that they would always, (60%) or usually, (15%) recycle the used oil if a nearby service station would take the used oil.

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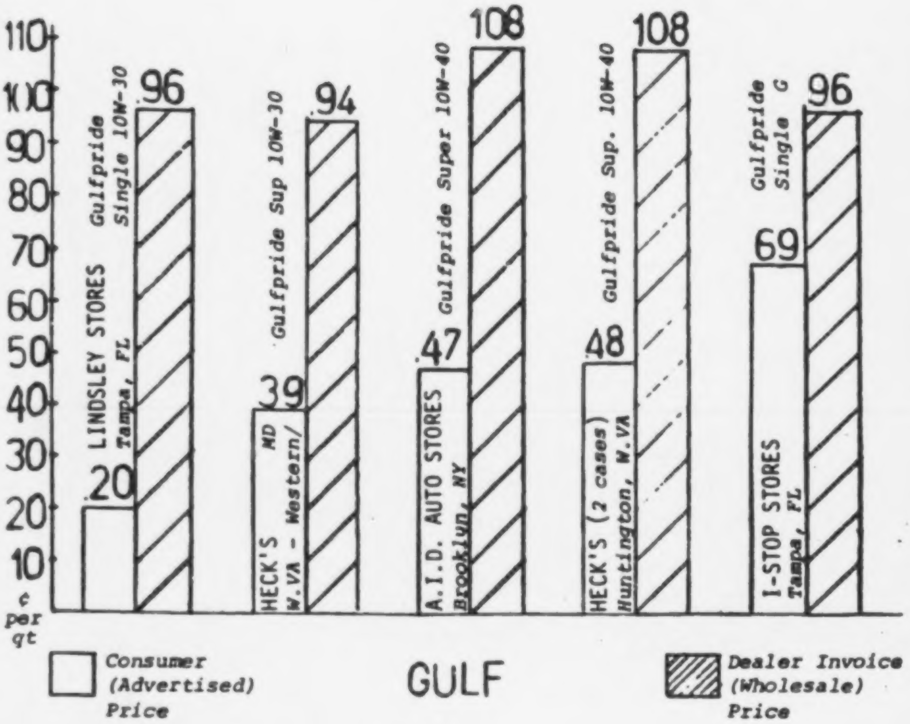
ATTACHMENT III

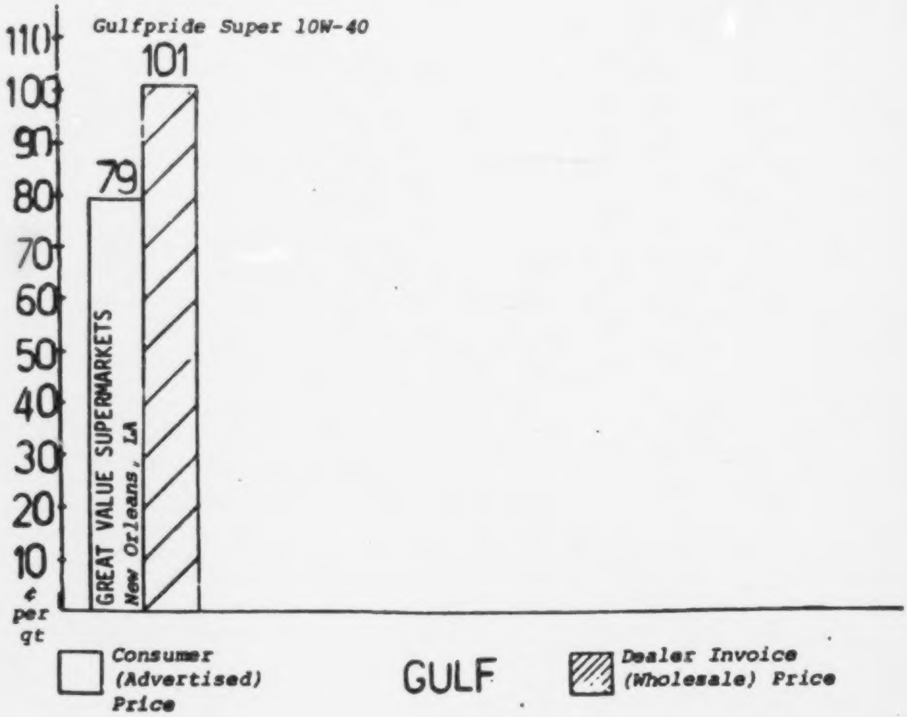
DO-IT-YOURSELFER RETAIL

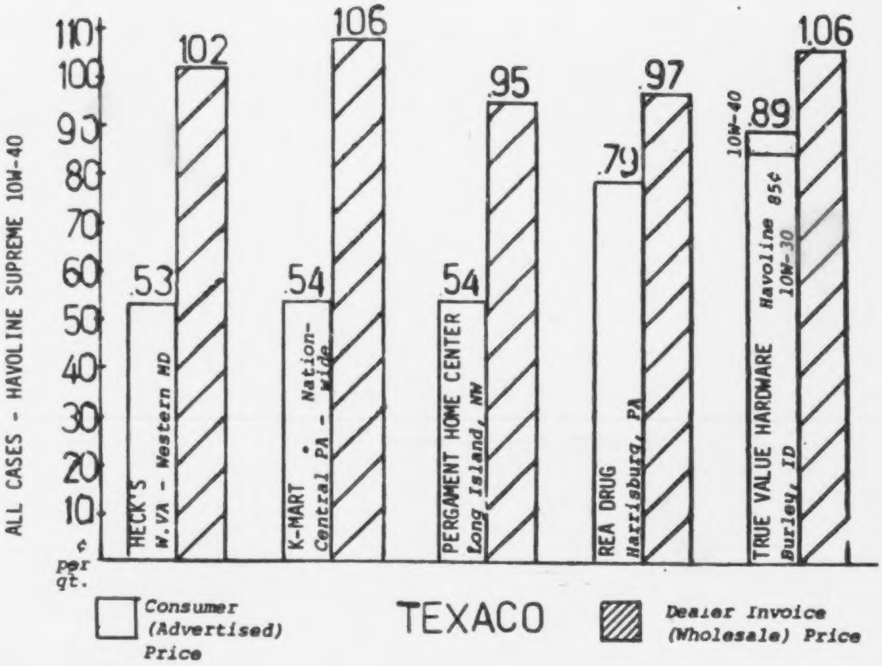
vs.

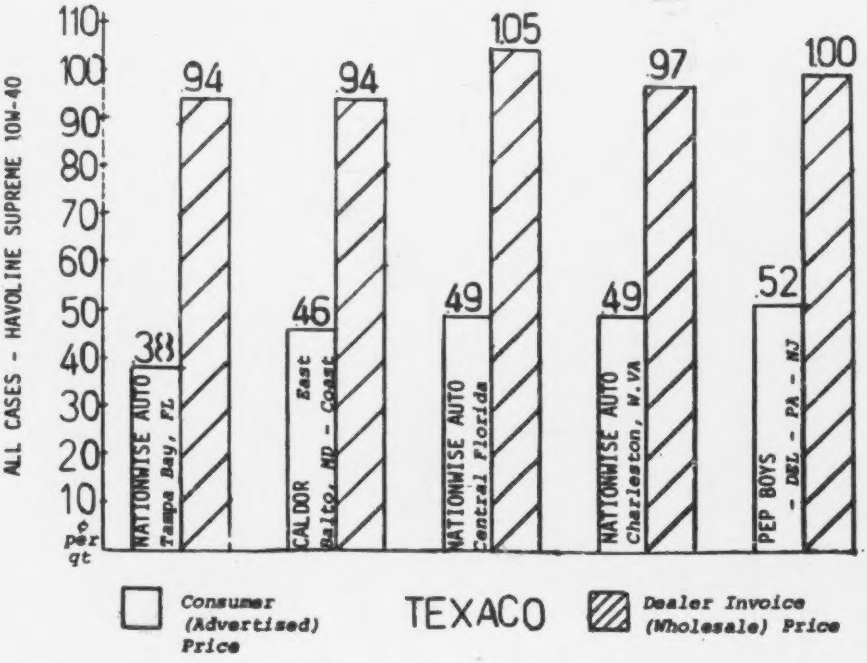
DEALER "WHOLESALE"

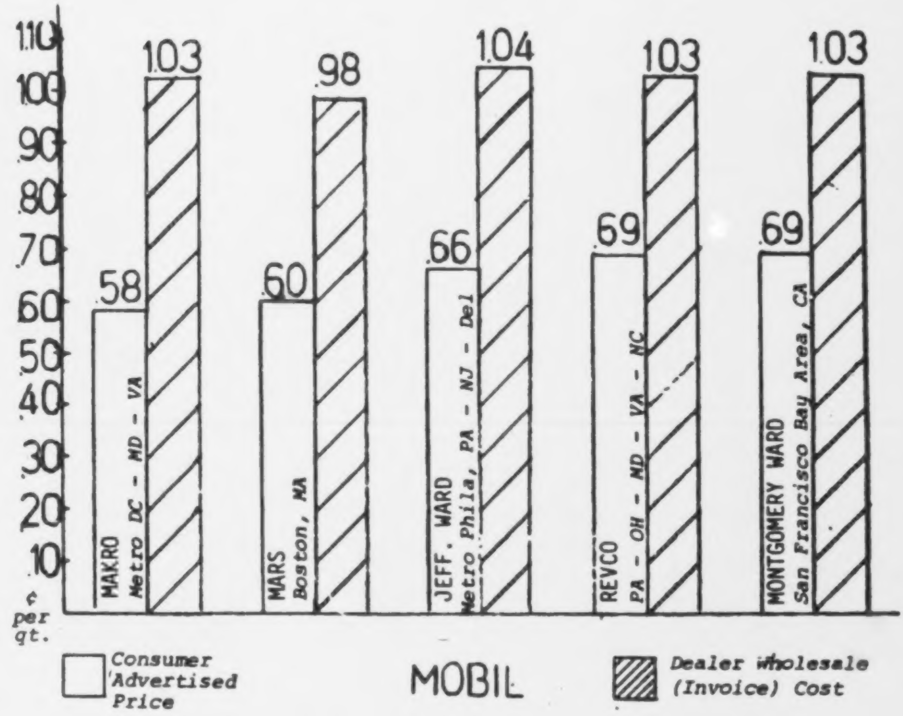
PRICES

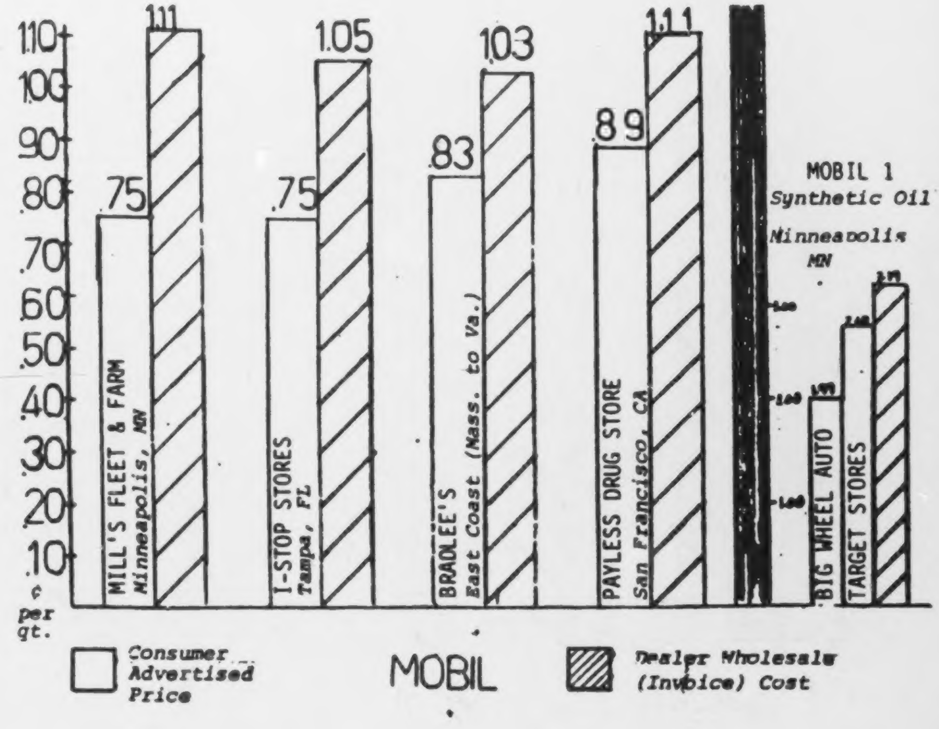

110
100
90
80
70
60
50
40
30
20
10
¢ per qt
LINDSLEY STORES Tampa, FL
Gulfpride Single 10W-30
20
96
HECK'S W.VA - Western/ MD
Gulfpride Sup 10W-30
39
94
A.I.D. AUTO STORES Brooklyn, NY
Gulfpride Super 10W-40
47
108
HECK'S (2 cases) Huntington, W.VA
Gulfpride Sup. 10W-40
48
108
1-STOP STORES Tampa, FL
Gulfpride Single G
69
96
Consumer (Advertised) Price
GULF
Dealer Invoice (Wholesale) Price

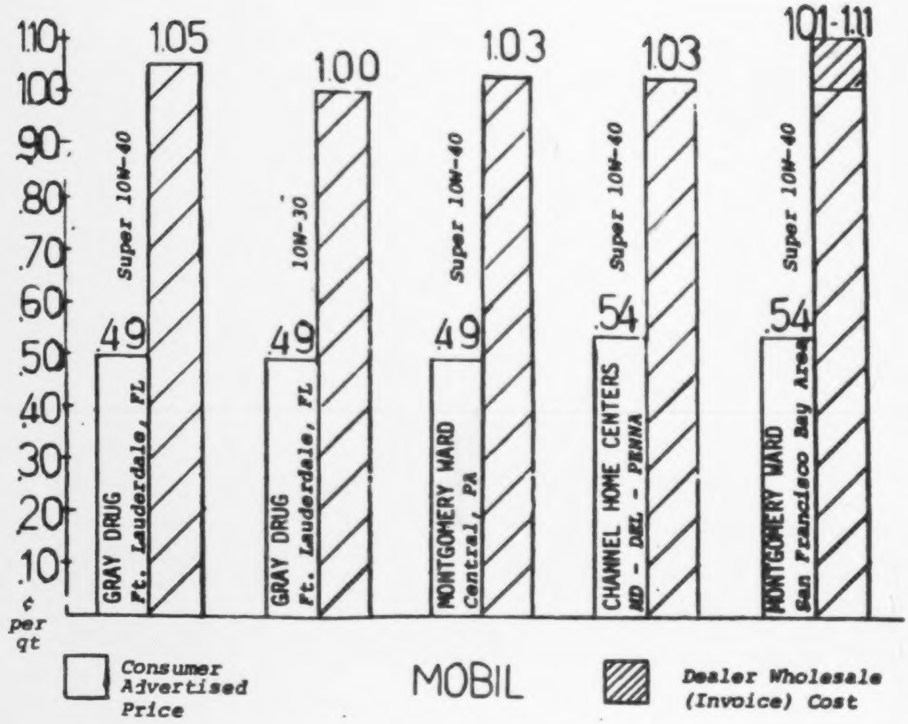

Gulfpride Super 10W-40
110
100
90
80
70
60
50
40
30
20
10
¢ per qt
GREAT VALUE SUPERMARKETS New Orleans, LA
79
101
Consumer (Advertised) Price
GULF
Dealer Invoice (Wholesale) Price

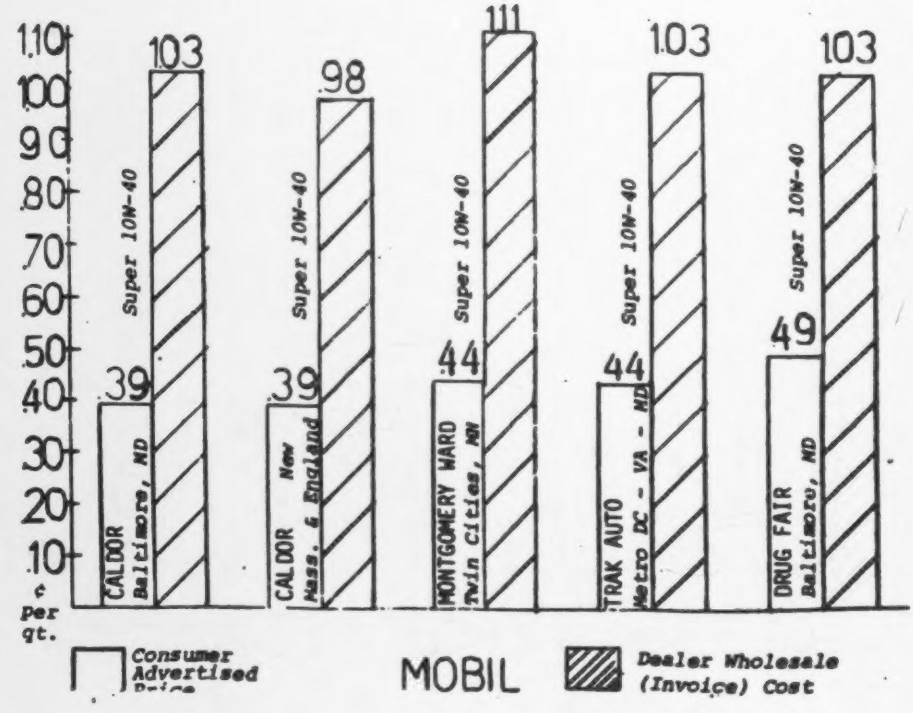

ALL CASES - HAVOLINE SUPREME 10W-40
110
100
90
80
70
60
50
40
30
20
10
¢ per qt.
.53
102
HECK'S W.VA - Western MD
.54
106
K-MART • Central PA - Nation-wide
.54
.95
PERGAMENT HOME CENTER Long Island, NY
.79
.97
REA DRUG Harrisburg, PA
10W-40
.89
1.06
TRUE VALUE HARDWARE Burley, ID
Havoline 85¢ 10W-30
Consumer (Advertised) Price
TEXACO
Dealer Invoice (Wholesale) Price

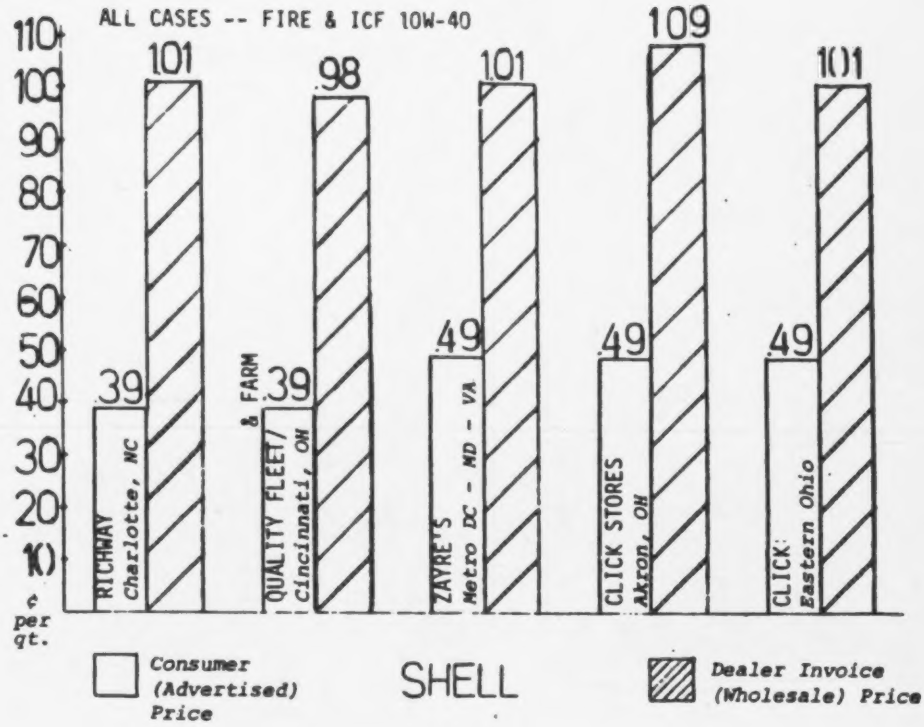

ALL CASES - HAVOLINE SUPREME 10W-40
110
100
90
80
70
60
50
40
30
20
10
¢ per qt
.38
.94
NATIONWISE AUTO Tampa Bay, FL
.46
.94
CALDOR Balto, MD - East Coast
.49
1.05
NATIONWISE AUTO Central Florida
.49
.97
NATIONWISE AUTO Charleston, W.VA
.52
1.00
PEP BOYS - DEL - PA - NJ
Consumer (Advertised) Price
TEXACO
Dealer Invoice (Wholesale) Price

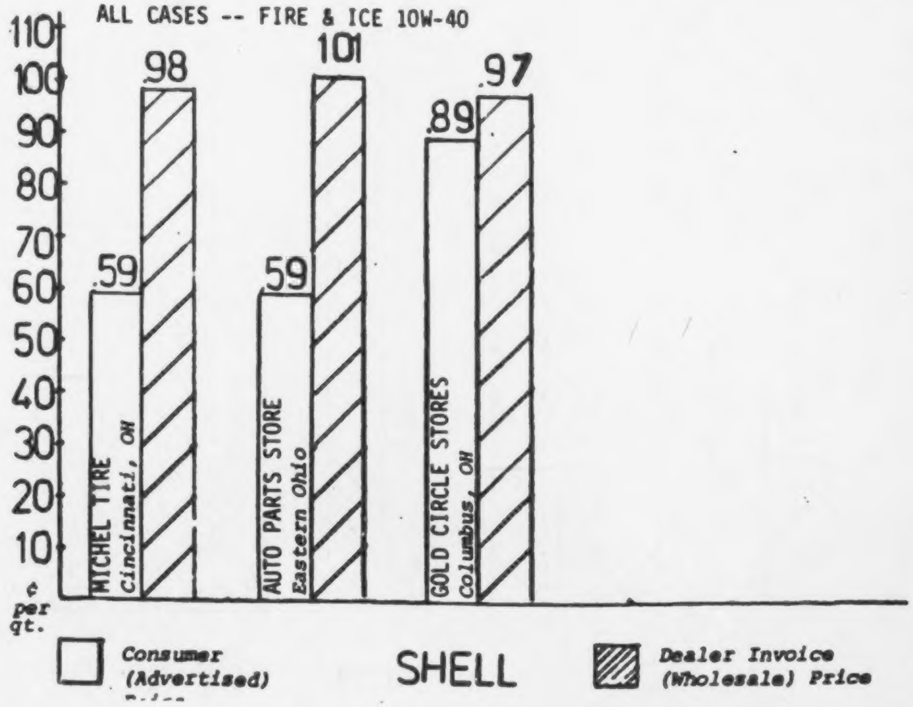

1.10
1.00
.90
.80
.70
.60
.50
.40
.30
.20
.10
¢ per qt.
.58
1.03
MAKRO
Metro DC - MD - VA
.60
.98
MARS
Boston, MA
.66
1.04
JEFF. WARD
Metro Phila, PA - NJ - Del
.69
1.03
REVCO
PA - OH - MD - VA - NC
.69
1.03
MONTGOMERY WARD
San Francisco Bay Area, CA
Consumer Advertised Price
MOBIL
Dealer Wholesale (Invoice) Cost

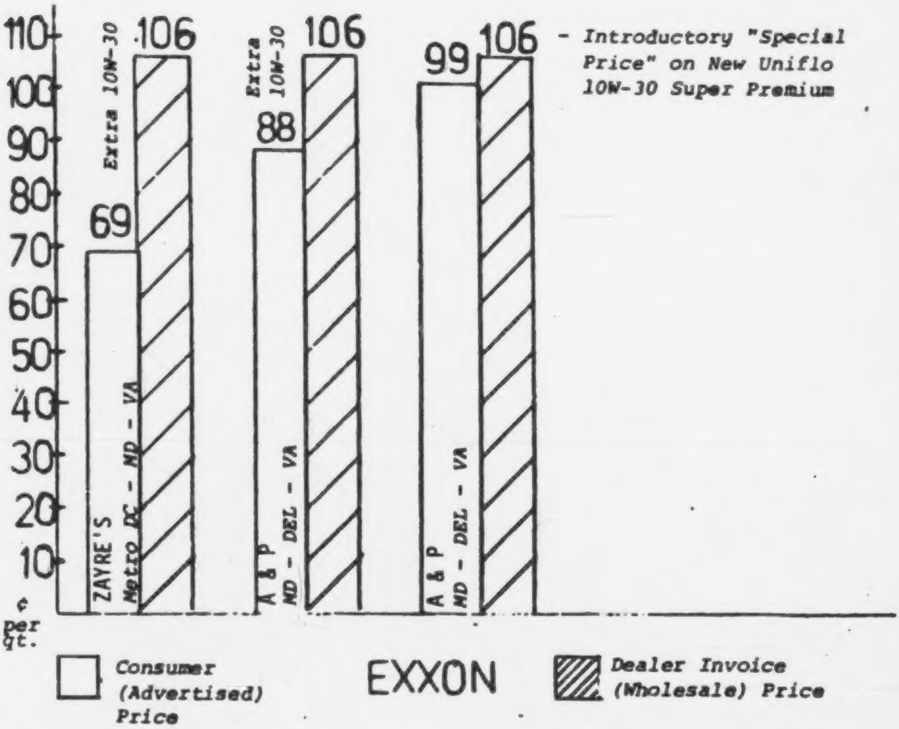

1.10
1.00
.90
.80
.70
.60
.50
.40
.30
.20
.10
¢ per qt.
.75
1.11
MILL'S FLEET & FARM
Minneapolis, MN
.75
1.05
I-STOP STORES
Tampa, FL
.83
1.03
BRADLEE'S
East Coast (Mass. to Va.)
.89
1.11
PAYLESS DRUG STORE
San Francisco, CA
MOBIL 1
Synthetic Oil
Minneapolis MN
BIG WHEEL AUTO
TARGET STORES
Consumer Advertised Price
MOBIL
Dealer Wholesale (Invoice) Cost

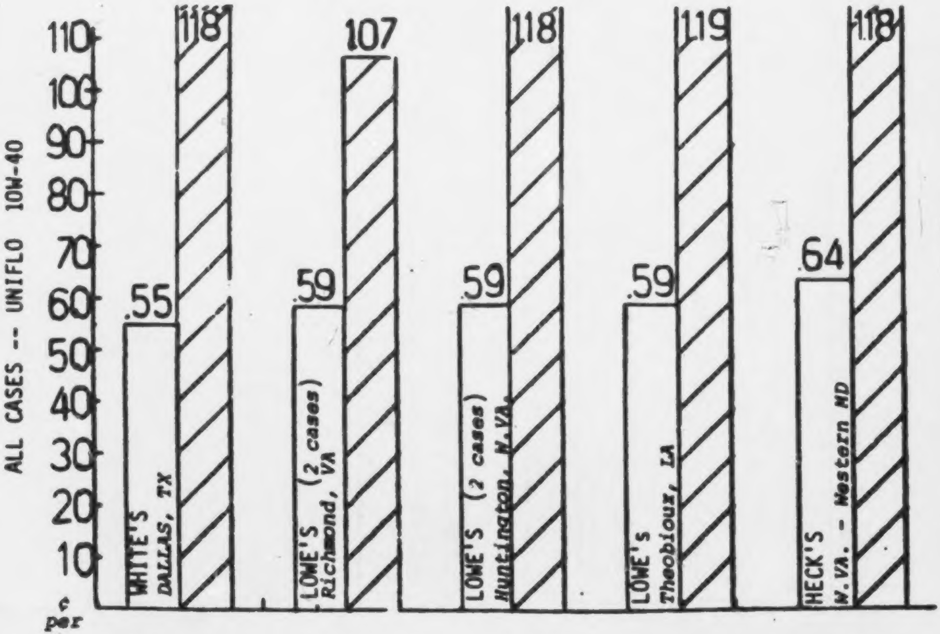

1.10
1.00
.90
.80
.70
.60
.50
.40
.30
.20
.10
¢ per qt
1.05
1.00
1.03
1.03
1.01-1.11
.49
.49
.49
.54
.54
Super 10W-40
10W-30
Super 10W-40
Super 10W-40
Super 10W-40
GRAY DRUG Ft. Lauderdale, FL
GRAY DRUG Ft. Lauderdale, FL
MONTGOMERY WARD Central, PA
CHANNEL HOME CENTERS MD - DEL - PENNA
MONTGOMERY WARD San Francisco Bay Area
Consumer Advertised Price
MOBIL
Dealer Wholesale (Invoice) Cost

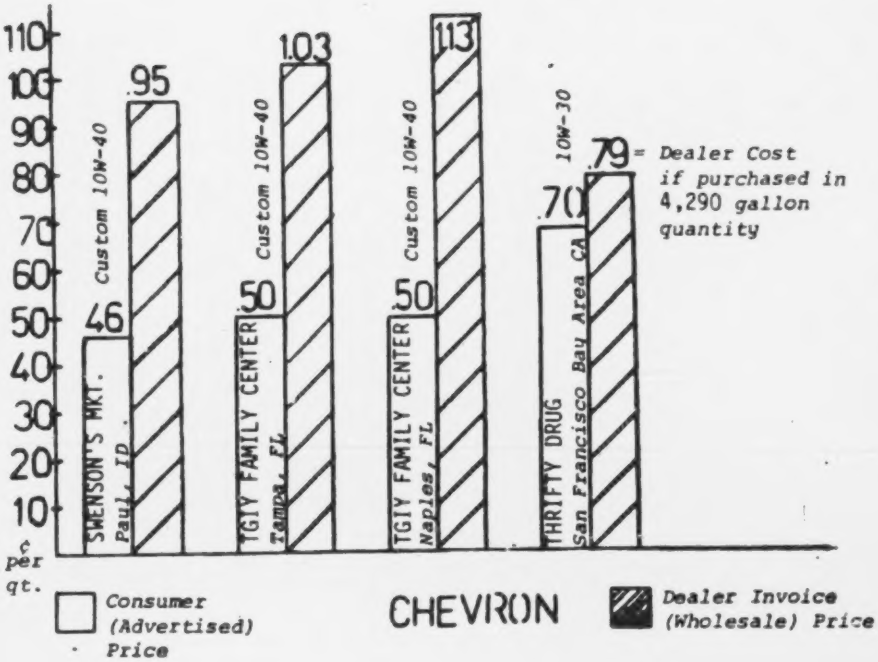

1.10
1.00
.90
.80
.70
.60
.50
.40
.30
.20
.10
¢ per qt.
1.03
.98
1.11
1.03
1.03
.39
.39
.44
.44
.49
Super 10W-40
Super 10W-40
Super 10W-40
Super 10W-40
Super 10W-40
CALDOR Baltimore, MD
CALDOR New Mass. & England
MONTGOMERY WARD Twin Cities, MN
TRAK AUTO Metro DC - VA - MD
DRUG FAIR Baltimore, MD
Consumer Advertised Price
MOBIL
Dealer Wholesale (Invoice) Cost

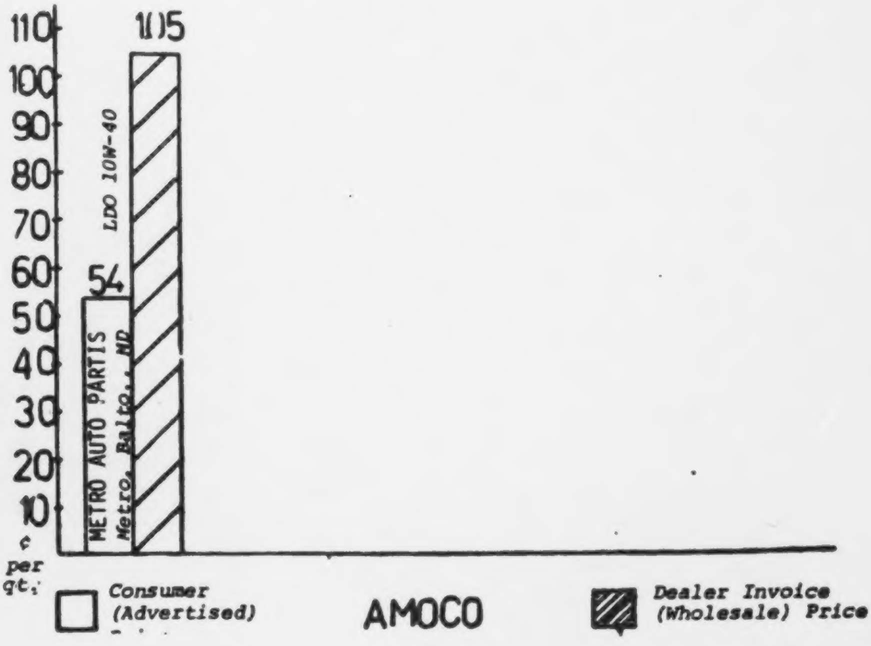

ALL CASES -- FIRE & ICF 10W-40
110
100
90
80
70
60
50
40
30
20
10
¢ per qt.
.39
101
RICHWAY
Charlotte, NC
.39
.98
QUALITY FLEET/ & FARM
Cincinnati, OH
.49
1.01
ZAYRE'S
Metro DC - MD - VA
.49
109
CLICK STORES
Akron, OH
.49
1.01
CLICK
Eastern Ohio
Consumer (Advertised) Price
SHELL
Dealer Invoice (Wholesale) Price


ALL CASES -- FIRE & ICE 10W-40
110
100
90
80
70
60
50
40
30
20
10
¢ per qt.
.59
.98
MICHEL TIRE
Cincinnati, OH
.59
1.01
AUTO PARTS STORE
Eastern Ohio
.89
.97
GOLD CIRCLE STORES
Columbus, OH
Consumer (Advertised)
SHELL
Dealer Invoice (Wholesale) Price


110
100
90
80
70
60
50
40
30
20
10
¢ per qt.
Extra 10W-30
106
69
ZAYRE'S
Metro DC - MD - VA
Extra 10W-30
106
88
A & P
MD - DEL - VA
99
106
A & P
MD - DEL - VA
- Introductory "Special Price" on New Uniflo 10W-30 Super Premium
Consumer (Advertised) Price
EXXON
Dealer Invoice (Wholesale) Price


ALL CASES -- UNIFLO 10W-40
110
100
90
80
70
60
50
40
30
20
10
¢ per qt.
118
55
WHITE'S
DALLAS, TX
107
59
LOWE'S (2 cases)
Richmond, VA
118
59
LOWE'S (2 cases)
Huntington, W.VA.
119
59
LOWE's
Theobioux, LA
118
64
HECK'S
W.VA. - Western MD
Consumer (Advertised)
EXXON
Dealer Invoice (Wholesale) Price


110
100
90
80
70
60
50
40
30
20
10
¢ per qt.
46
95
Custom 10W-40
SWENSON'S MKT.
Paul, ID
50
1.03
Custom 10W-40
TGIY FAMILY CENTER
Tampa, FL
50
113
Custom 10W-40
TGIY FAMILY CENTER
Naples, FL
.70
.79 = Dealer Cost if purchased in 4,290 gallon quantity
10W-30
THRIFTY DRUG
San Francisco Bay Area CA
Consumer (Advertised) Price
CHEVRON
Dealer Invoice (Wholesale) Price


110
100
90
80
70
60
50
40
30
20
10
¢ per qt.
54
105
LDO 10W-40
METRO AUTO PARTS
Metro, Balto., MD
Consumer (Advertised) Price
AMOCO
Dealer Invoice (Wholesale) Price

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APPENDIX

COMMENTS BY
VIC RASHEED, EXECUTIVE DIRECTOR
SERVICE STATION DEALERS OF AMERICA, INC.
ON
PROPOSED RULES ON
LISTING AND MANAGEMENT STANDARDS
OF USED OIL AS HAZARDOUS WASTE
BY THE
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
January 16, 1986

The Service Station Dealers of America (SSDA), a trade association representing 60,000 dealers in the contiguous United States, Puerto Rico, Hawaii, and the District of Columbia, welcomes this opportunity to comment on EPA's proposal to list used oil as a hazardous waste and on the proposed management standards.

The used oil recycling program promoted by many states in the past decade, has proven to be one of the nation's most successful programs; recycling what was formerly a waste product into a valuable resource.

The RCRA amendment passed by Congress in 1984 (Section 3014), sought to encourage this recycling of used oil, but included the phrase "consistent with the protection of human health and the environment."

EPA has used this term to impose severe restrictions on the permissible use of used oil without realizing that the final impact of its actions, will actually harm the environment by threatening the continued existence of the waste oil collection program through service stations; many of whom serve as collection sites for the general public.

Some dealers have already threatened to return used motor oil from oil changes to the customer in the same manner they are required to present replaced parts. Others have said that they will cease changing oil entirely.

This, in turn, would lead to more dumping of used oil in sewers and on the ground by the largest single group of waste oil generators, i.e., the DIY's, (do-it-yourselfers).

The Agency has grossly underestimated the amount of oil purchased and dumped into the environment by do-it-yourselfers. Over the last few years, do-it-yourselfers have taken over 70% of the used oil market, or more than 570 million gallons of the 800 million gallon motor oil market.* EPA's own 1981 data shows that only 14% of the DIY oil will be recycled, while over 60%, or 345M gallons, will be dumped, to find its way into the nation's groundwaters.

EPA relies heavily on the study done by Franklin Assoc., which grossly underestimates the amount of used oil generated by DIYers. Their figure is less than one-third the industry figure computed by authoritative industry sources such as NPN and the Lundberg Letter. This is a basic flaw in EPA's analysis.

By contrast, service stations account for only 16% of the oil sold, but will recycle nearly all of it. If EPA follows through on its proposal, the DIY share will markedly increase.

SSDA believes the agency is making a fundamental error by viewing the listing as separate and distinct from the management standards. The proposals must be read together in view of the mandate to protect human health and the environment. Encouraging dumping of D-I-Y oil which these proposals would do is not protective. Attached is a price study done last year by SSDA at the request of the FTC, which clearly outlines the price-discrimination practiced by oil companies to encourage oil sales to DIYers often at retail prices one-third the dealers wholesale cost.

---

*NPN Factbook, 1985 Motor Oil Sales

Nowhere in the more than 100 pages of its proposed regulations and supporting documentation, does EPA address the problem of DIY's which is the most pressing single issue in waste oil control.

EPA says that it considers any increase in DIY motor oil to be an adverse impact on the environment. But it does not make it an offense for a householder to dump containers of waste oil in trash cans, down sewers, or simply let it out on a vacant lot as so many do. Yet states such as Maryland make it a criminal offense for DIYers to dump used oil anywhere except in an approved collection facility.

EPA seems to be making a basic assumption that all used oil generated by a service station is adulterated either intentionally or accidentally by various types of contaminants other than those contained in the used motor oil itself.

EPA's Regulatory Impact Analysis implies that a dealer's waste oil storage tanks have been used to dump other chlorinated organics such as degreasing solvents. The industry practice has always been to segregate these solvents from waste oil. These products are disposed of and recycled by the contractor who supplies the station with its engine parts, cleaning equipment.

EPA also states that used oil storage tanks may be contaminated by hazardous waste from previous materials. Since the advent of used oil recycling after the 1974 energy crisis, when used oil became a valuable resource, dealers have meticulously maintained the integrity of the contents of their used oil tanks. We find EPA's assumption both unjustified and offensive.

The most serious source of contamination is the oil dumped by householders which include pesticides, solvents such as paint thinners, etc. The first reaction to the proposed rule to list used oil as a hazardous waste will be a general refusal by service stations to accept used oil from householders and risk having their used oil contaminated with a hazardous waste and incurring a huge expense for proper disposal. We understand that cleaning out a standard station grease trap which once cost $60, may cost in excess of $1,500 when used oil is listed as a hazardous waste.

EPA says its main concern with the impact on small quantity generator of its proposal is (1) that they collect the used oil generated at their sites for recycling, and (2) that they continue to accept household generated used oil.

Considering the huge cost of disposal in an out-of-state hazardous waste disposal site, service station dealers will have serious reservations on complying with either of these concerns.

EPA in its Regulatory Impact Analysis estimates the cost of its proposed rules to a generator of 100 kilos of used oil per month, to be $4.80 per gallon. If secondary containment standards for storage tanks are imposed, the cost it says would be doubled.

EPA says a probable consequence of its proposal to list used oil as a hazardous waste will be: price increases in oil changes to the public; an increase in DIY oil changes of about 12M gallons per year; a reluctance of service stations and repair shops to accept DIY used oil and increased sewage disposal of used oil. In its comments, EPA writes, "These are the sorts of outcomes that concerned Congress when it was considering the issue of recycled oil regulation." It then quotes from House Report No. 98-198 (98th Congress):

"Many used oil generators, such as service stations, will be reluctant to collect and recycle used oil if it means incurring excessive regulatory responsibilities. Any regulatory scheme for generators should . . . be structured to avoid this result."

This admonishment by Congress has evidently been wasted on EPA. One of the effects of EPA's new prohibition on marketing and burning of hazardous waste fuel and off-spec used oil, effective last December 9, has already been a slowdown in waste oil collections and a drastic drop in the price paid for used oil in some states.

Results from a national survey of service stations that we are currently engaged in, shows half of the respondents are now experiencing an unwillingness by used oil collectors to collect their used oil. Every single survey reported a lower price now being paid for used oil. In Massachusetts, the price tumbled from 35¢ per gallon to where ealers now pay collectors up to 10¢ per gallon. Parts of Ohio are experiencing similar problems.

There are many reasons why the proposals will have this effect.

1. Legal and Economic Implications of the Listing

The agency should be aware that by listing used oil as a hazardous waste, service station dealers will become subject to

Superfund liability for upstream recycling activities they know nothing about, and have no control over. Also, dealers will be exposed to potential liability under state environmental laws, and we have no idea what our ultimate liability would be in the emerging field of environmental torts.

Given the legal uncertainties, our members cannot afford to accept do-it-yourselfer oil which may contain pesticides and other toxic substances which we will be liable for. Used oil recycling is a marginally profitable activity for dealers; the risk is simply too great to continue these activities.

The increase in garage liability insurance premiums alone, as a result of the listing, will more than eat up the slim profit margin.

The proposed listing also subjects our used oil tanks to regulation as hazardous waste tanks under RCRA. Aside from the fact that this further demonstrates the untenability of viewing the listing and management standards as separate and distinct, the cost of the tank regulations will further render dealers' recycling activities uneconomic.

SSDA frankly has no idea what benefits the agency hopes to achieve by subjecting used oil tanks to even limited secondary containment. We are aware of no instances of oil tank leakage, and in any event most used oil tanks are not underground where damage to groundwater can more easily occur. We therefore take issue with the proposal to regulate all oil tanks and tank systems irrespective of location as hazardous waste tanks. This proposal is at best counter-productive, and at worst silly.

2. Cost of the Management Standards

Initially, we would like to commend the Agency for its efforts in promulgating the standards, as it is clear that a great deal of careful thought and effort went into them.

Our concern is with the small quantity used oil generator requirements, as we believe most dealers will fall into that category, with a caveat to be discussed further.

Initially, we believe that EPA should set the limits in gallons as opposed to kilograms. The kilogram unit of measure means nothing to most dealers, whereas gallons are a traditional unit of measure for used oil.

SSDA is very concerned with the 1,000 kilogram or 300 gallon limit EPA is considering. This is because any dealer who accumulates over 1,000 kg at any time becomes a large quantity used oil generator.

The problem here is that many dealers have used oil tanks that have a 550 gallon capacity. Dealers often fill their tanks over half-way before the oil is collected. Therefore, many dealers would unwittingly be kicked up into the large quantity generators category.

Application of the burdensome large quantity generator requirements would insure the demise of recycling of used oil by service stations. SSDA suggests that the small quantity generator limit be set at 1,001 gallons per month or accumulated at any time.

As stated earlier, SSDA believes that application of the interim prohibition could well render used oil recycling too costly to be continued. Application of further tank regulations would certainly guarantee this result.

EPA has expressed its concern that used oil could become more of a burden than a recyclable resource. We believe that EPA's worst fears would be realized by the imposition of overly burdensome regulation of tanks.

Service stations will not be able to continue their environmentally protective activities under the proposals.

SSDA recommends that if EPA truly wants to protect human health and the environment, it take the following action:

1. Do not list used automotive and truck oils as a hazardous waste.

2. Change the small quantity generator limit to 500 gallons.

3. Reconsider the proposed tank regulations, as they serve no beneficial purpose as written.

Summary

SSDA strongly urges the Agency to reconsider its listing decision and management standards, particularly with regard to storage tanks.

We believe the Agency has made a fundamental error in that it treats the listing decision as separate and distinct from the management standard. RCRA instructs the Agency that it is to protect human health and environment while maintaining the inpact on recycling.

The listing decision imposes management costs which are wholly unaccounted for in the Regulatory Impact Analysis and will cause the demise of recycling activities currently carried on by service station dealers. Many dealers will refuse to accept used oil for collection and will cease doing oil changes. The net result will be an increase in do-it-yourself dumping in derogation of Congressional intent to protect human health and the environment.

The Regulatory Impact Analysis is so seriously flawed as to be misleading, and we believe that it cannot be used to justify the proposals, particularly with regard to underground tanks.

The cost-benefit analysis is an exercise in pure fantasy.

The benefit analysis is based on the false assumption that recycling activities will increase as a result of the proposal. Nothing could be further from the truth.

The legal and economic climate that would be created if the proposals were adopted as written would ensure the demise of oil recycling by service stations.

The cost analysis blithely assumes that costs on small generators would be minimal. It fails to account for costs such as increased insurance premiums. The RIA admits it cannot gauge used oil prices which have been sharply falling. Most important, this economic model fails to account for human factors.

Service station dealers are currently struggling with underground tank regulations, RCRA small quantity generator rules, Stage II vapor recovery, and others. Every day dealers see their branded motor oil sold to do-it-yourselfers at less than half their wholesale cost. The DIYs then dump the oil into the ground, yet EPA trains its guns at the segment of the industry that has treated used oil in an environmentally sound manner.

Dealers are beginning to feel overwhelmed at the volume of environmental regulation piling up at the same time. The listing proposal has generated a tidal wave of protest from our members, who have indicated that they will in no circumstances continue to accept used oil from do-it-yourselfers.

Our members are planning legal challengers to laws such as that in New York which require service stations to accept any and all do-it-yourselfer oil brought to them.

The RIA also shows a distressing disregard for management standards long in effect at service stations. For example, it states, "Chlorinated organics such as degreasing solvents are frequently introduced into automatic used oil storage tanks" and "storage tanks may be contaminated with hazardous waste from previous material handling." Anyone who knows anything about service station management would know that used oil has been segregated from these other materials.

The RIA's assumptions with regard to storage tanks are without merit. It assumes that used oil tanks have the same leakage problems as underground gasoline storage tanks. It appears the consultants have never heard of problems such as alcohol-base additives to gasoline causing tank seals to leak, the fact that many used oil tanks are stored indoors and above ground.

Moreover, SSDA knows of no cases of leaks of used oil tanks at all, much less any damage caused by them. In short, these assumptions are incredibly naive.

We see no benefit to be achieved by subjecting used oil tanks to the hazardous waste rules. The costs of tank regulation alone will more than eat up any profits achieved by dealers in their used oil recycling activities.

SSDA strongly urges the Agency to reconsider its proposal to list and the concerns with the management standards we have raised. We shall elaborate on these points in our formal comments, after we have had time to study the RIA and other appropriate documents.

Used oil can be adequately regulated without listing it as a hazardous waste. In fact, if EPA truly wishes to protect human health and the environment, it would not.

BNA daily report for executives
Fri. April 18, 1986 pp. A-13, 14

ENVIRONMENT: BANK CAN BE HELD LIABLE FOR COSTS EPA INCURS AT WASTE SITE

A bank that obtained a hazardous waste site in a foreclosure action can be held liable for the expenses of cleaning up a site under the superfund law, a federal district court ruled April 9. (U.S. v. Maryland Bank & Trust Co.)

Maryland Bank & Trust Co. can be held liable for $551,713.50 in cleanup costs spent by the Environmental Protection Agency for a drum site in California, Md., the U.S. District Court for the District of Maryland ruled.

The bank acquired the land through foreclosure, and owned it at the time of EPA's cleanup in 1983 and 1984, according to the court. As an "owner or operator" of the site, the bank could be held liable under the Comprehensive Environmental Response, Compensation, and Liability Act (the superfund law), according to the Maryland court.

Hazardous waste disposal operations were conducted at the site in the early 1970s by a previous owner, Herschel McLeod Sr. McLeod's son purchased the property in 1980, assisted by a mortgage from Maryland Bank, which later foreclosed on the mortgage.

Although there is "ambiguity" in the statute over the precise meanings of owner and operator, the court held that a current owner of a facility can be held strictly liable for response costs under Section 107(a)(1) of the statute, "without regard to causation."

The court delayed making a final ruling on whether Maryland Bank is liable for the cleanup costs, citing the need for a trial to determine whether the bank was eligible to raise a third-party defense under the statute. The bank claimed that conditions at the site were due to the acts of persons unrelated to the bank.

Although there was evidence that the bank loaned money to the previous owners of the land, the evidence also tended to show that no loans were outstanding at the time of the hazardous waste disposal in 1972 and 1973, the court noted. A full trial was required by the court to "flush out the bare facts" that form the basis for the third-party defense.

In addition, Maryland Bank argued that whatever ownership it exercised over the site was simply to protect its security interest in that property, according to the court. Under the superfund law, persons may be exempted from liability for cleanup costs if their ownership was based on a need to protect a security interest in the property.

The district court rejected the defense, using a "narrow" interpretation of the Act to hold that the exemption applied only to persons who had a security interest in the property at the time of the cleanup. The bank foreclosed on the property before the cleanup, and was in full ownership at the time of EPA's remedial action, according to the court.

LUNDBERG LETTER

Weekly Vital Statistics and Analysis in Oil Marketing

Published Fridays

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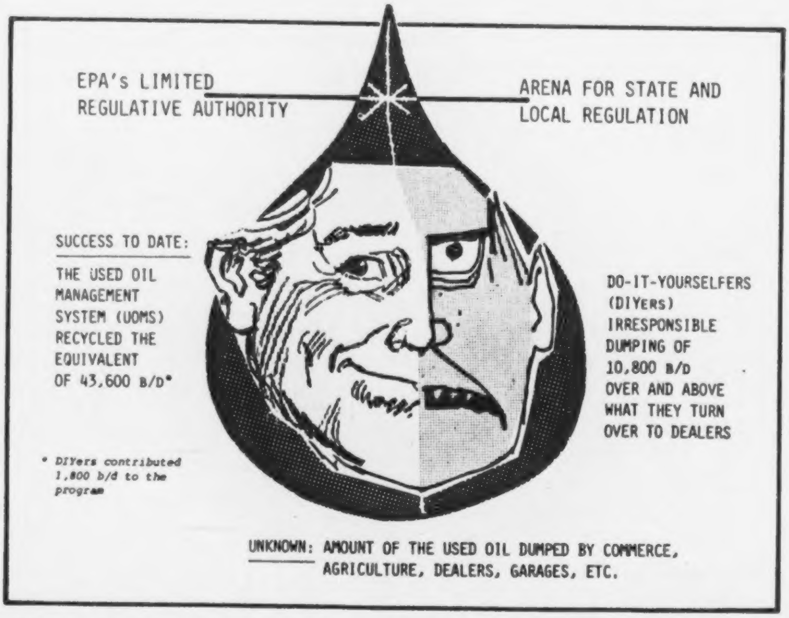
VOLUME XIII NUMBER 25
APRIL 18, 1986

Uncontrolled 16,000 b/d Oil Spillage

A SCHIZOID POLICY ON USED OIL


EPA's LIMITED REGULATIVE AUTHORITY
ARENA FOR STATE AND LOCAL REGULATION
SUCCESS TO DATE:
THE USED OIL MANAGEMENT SYSTEM (UOMS) RECYCLED THE EQUIVALENT OF 43,600 B/D*
* DIYers contributed 1,800 b/d to the program
DO-IT-YOURSELFERS (DIYERS) IRRESPONSIBLE DUMPING OF 10,800 B/D OVER AND ABOVE WHAT THEY TURN OVER TO DEALERS
UNKNOWN: AMOUNT OF THE USED OIL DUMPED BY COMMERCE, AGRICULTURE, DEALERS, GARAGES, ETC.

Last year many service stations were paid 20 cents/gal for their used crankcase oil that collectors picked up once a month. In late November the EPA proposed that used oil should be listed as a hazardous waste. Since then, many service stations have been told that they will not be paid for the collection of used oil, while many others are now being charged 20 cents/gal. The EPA has received over 800 written comments from industry representatives, the thrust of which is "My used oil is not contaminated."

Dan Lundberg APR Publisher
Contributing Editors John Ayling Mark Emond Jan C. Lundberg Graphics Chu Shaw Business Manager Netta B. Shelton Production Craig P. Hardin

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Mailing address P.O. Box 3996 North Hollywood California 91609-0896 U.S.A. Telephone (818) 768 5111 TWX 1 910 498 2739

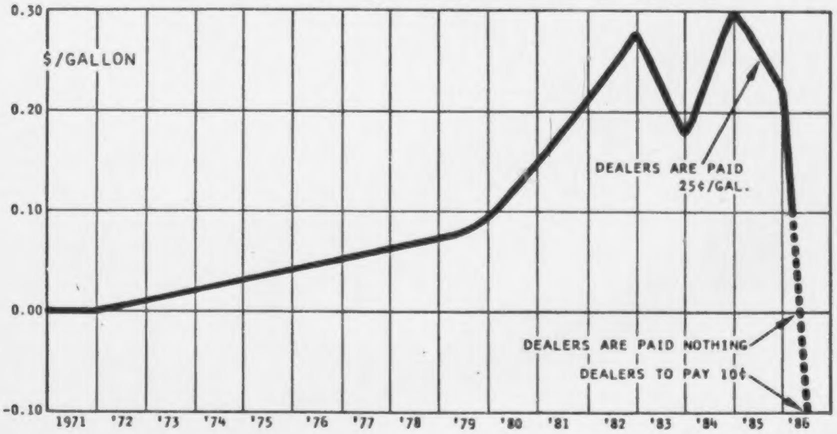
Uncontrolled (16,000 b/d) Oil Spillage

What's at stake?

For the EPA the need to set forth a regulatory framework for the management of used oil is a decade-old agenda item that originated in the Resource Conservation and Recovery Act (RCRA) of 1976.

For the nation a workable used oil management system (UOMS) protects the health of people, plants, animals and micro-organisms. A workable system preserves a valuable resource. Finally, recycling used oil reduces dependence on foreign sources of crude (virgin) oil and thereby helps lower the U.S. trade deficit.

For the dealer two things are at stake at once: the well-being of the currently functioning used oil recycling system and the present and future liability exposure of those players who choose to remain in the system. There's also the matter of money. What used to generate $125/mo (for a 500 gal tank) now might end up costing that amount plus increased insurance costs. See chart.


USED LUBE OIL PRICES PAID TO SERVICE STATIONS

Source: California Oil Recyclers; RTI *Lundberg Letter Chart*

What's the Problem?

The basic problem is that the nation's statutes address only half of the source of used oil, namely, that half generated by industry, commerce and government.

> **The U.S. Government is the nation's largest single "generator" of used oil. Bill Sanjour at the EPA is working on regulations that would require the Federal government to buy recycled oil**

The other side of the problem, represented by the Do-It-Yourself (DIY) oil changer, lies beyond present national policy.

The problem is the interface, the bridge, the connection, the link--call it what you will--between the managed half that the EPA regulations seek to standardize and the unregulated half which, today, is governed by the law of the jungle.

> Only a few states, such as Maryland and New York, have passed legislation to encourage DIYers to returned used motor oil to designated recycling centers. Maryland has a $200 fine for dumping used oil in other than an approved collection center--and a $1,000 fine and 30 days in the clinker for a second offense.
>
> New York law requires service stations to accept DIY oil.

Most of the organizations that have responded to the EPA's call for "comments" believe--some of them, very strongly so--that this interface issue isn't being addressed well in proposals to list used oil as a hazardous waste.

What's the size of "the other half," the unregulated dumping of DIY oil? Here are four industry estimates (Table 1).

Table 1. How Big is the DIY Oil Spillage Equivalent (OSE)?

	Million gal		1,000 b/d
Data sources:	1983	1985	
Franklin Associates	167	--	10.9
SSDA	--	355	23.2
KTI	--	251	16.4
NIPER	--	298	19.4

SSDA - Service Stations Dealers of America
KTI - Kinetics Technology International
NIPER - National Institute for Petroleum & Energy Research

Of the oil that DIYers recycled last year, 65% was handled by service stations (See Table 2).

Table 2. How much oil do DIYers Recycle?

	% total	Million gal		1,000 b/d	% Handled by Svc Sta
Data sources:		1983	1985		
Franklin Associates	14	27	--	1.8	--
SSDA	14	--	57	3.7	65
KTI	14	--	58	3.8	--
NIPER	15	--	53	3.4	--

But many service stations, in response to the uncertainty connected with the possible hazardous waste listing, are taking down their signs that said they would accept crankcase oil from do-it-yourselfers. If the service station accepts crankcase oil into which have been mixed household solvents, paint thinners and pesticides and if, subsequently, there is environmental pollution caused by these hazardous substances, the courts will rule that the service station is liable for having, in effect, accepted the liability responsibility with the old oil.

From the other side of the street, What is the DIYer to do? Leave his cans of oil on the service station's islands after closing hours--or sneak it into the municipal land fill by filling his Clorox bottle and putting it into his trash can? (There's a saying in among used oil collectors that more used oil is collected by municipal trash collectors than by used oil collectors who do it for a living.)

> Large quantities of generated used oil are dumped (about 241 million gallons in 1983). Most of this oil is automotive engine oils. DIYers are believed to dump over 100 million gallons each year in backyards, down drains, along roadsides, and in miscellaneous other places. Most of the remainder is dumped by operators of large off-road equipment such as farmers, construction crews, mining companies and the military.

Phrased differently, if, as SSDA believes, 62% of all petroleum-related pollution in the United States comes from unregulated or mismanaged motor oil, who's responsible? The Do-It-Yourselfer who pours 200-400 million gallons of oil a year in his backyard and municipal dump? The mass merchandiser who doesn't provide a recycle collection point for the discount oil he sells at half the dealer's buying price? The off-spec reprocessor whose "virgin oil" is contaminated with gasoline and solvents but is sold as heating oil and bunker fuel? The integrated refiner that promotes de facto two-tier prices for his lube oil? Or, finally, the Congress for not having conceived or funded a federal program with enforcement authority that could change the behavior of the motoring public.

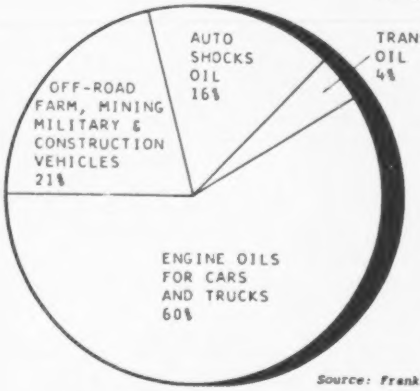
The Franklin Associates Study

In 1984 the EPA, in keeping with the requirement of RCRA to promote recycling and improve environmental standards, commissioned a study of the phenomenon of used oil in the U.S. The study examined the origin of used oil, by type of "generator," its degree of contamination by already-listed hazardous materials, and its markets.

The study, which took 1983 as a reference year, concluded in that year 2.3 billion gallons of oil were sold. This new oil generated 1.2 billion gallons of recoverable used oil. Of the potential recoverable volumes, 55% (670 million gallons) entered the used oil management system (UOMS), which is comprised of collectors, processors, and re-refiners.

Franklin Associates observed that "although the processing technologies utilized by the use oil management system are relatively simplistic, the system itself is quite complex. There are . . . hundreds of different types of companies involved in management practices as well as hundreds of pathways which generated used oil may follow on its way to reuse or disposal."

BREAKDOWN OF AUTOMOTIVE & CRANKCASE OIL SOLD IN THE U.S.
IN 1983



0.732 Cars & Trucks
0.252 Off-Road
0.192 Automobile Hydraulic
0.049 Transmission Oil

1.225 billion gal.
Total New Crankcase & Hydraulic Oil (1983)

Source: Franklin Associates *Lundberg Letter Chart*

The study showed that collected and processed used oil is sold primarily as a fuel oil, about 88% in 1983. Of the 590 million gallons sold as such, 50% had been blended with virgin fuel oil products. Other reuse markets included road oil (69 million gallons) and re-refined lube products (63 million gallons). Another 35 million gallons were used as flotation oils, asphalt extenders, and form oils.

The surprise of the study was the conclusion that used oil, which itself is not a hazardous waste, was contaminated by hazardous substances. As the report noted,

> the results of 1,071 analyses indicate that high levels of contamination are common for many constituents including lead, chromium, cadmium, and several chlorinated solvents. PCB contamination was detected in about 18% of the analyses.

The study concluded that automotive used oils were likely to have higher concentrations of hazardous heavy metals, while industrial oils tended to have higher levels of chlorinated solvents and PCB's.

One of the ways that the presence of hazardous substances was verified was by the flash point of the oil samples. Thirty percent had a measured flash point below 140 deg. F, which is one criterion for classifying waste as hazardous. (Virgin lube oils have a flash point above 350 deg. F., the discrepancy attributable to the presence of of low flash point materials such as gasoline and solvents.)

Of major importance for the recycling industry were three conclusions:

-- "overall, processing does not appear to significantly affect the concentration of hazardous materials in used oil,"

-- "the used oils burned as fuel have much higher levels of hazardous constituents than any virgin fuel oil products,"

-- "used oils do not appear to differ significantly in contaminant levels according to end-use markets." Similar levels of contamination were measured in heating oils, road oils and the feedstock of re-refiners.

Industry response

The findings of the Franklin study were strongly questioned by trade associations such as Service Station Dealers of America (SSDA), while other groups, such as National Oil Recyclers Association (NORA), questioned the validity of the EPA's Regulatory Impact Analysis (RIA). On the other side of the argument, Tim Sparks, President of Kinetics Technology International (KTI)'s Relube Division, thinks that 90% of used oil contains halogens (the chemical group that includes chlorine) at levels greater than 1,000 ppm, an excessive level. In response to all of this the EPA on March 10, 1986, asked for additional comments on controversial questions including the following:

> Will insurance costs increase if recycled used oil is listed as a hazardous waste?
>
> How do generators, transporters, processors, and burners perceive potential liabilities from used oil mismanagement?
>
> If recycled used oil is listed as a hazardous waste, to what extent will burners stop using it?
>
> What is the price differential between burning used oil and other fuel, and how is the price differential likely to change over the next four years?
>
> If recycled used oil is listed as a hazardous waste, what impact will it have on service stations, oil change stations, and retailers who perform oil changes?
>
> Are there data to indicate what percentage of oil change service operators will be come unwilling to accept DIY used oil?

NORA observes that if burners of used oil are required to comply with facility standards, and if the price of virgin oil remains low, then most asphalt plants will refuse to buy recycled oil, while others, such as cement kilns with proper permits, are likely to charge as much as 50 cents/gal to receive and burn waste solvent with 100,000 BTUs/gal.

NORA sees the cost of disposal being transferred from burner to recycler to generator. NORA's comments to the EPA gave this warning:

> "Couple the cost of disposal to the added cost of insurance and a large number of service stations will stop changing oil. Those that continue to change oil will be forced to charge many times the current price".

Regarding the willingness of service station operators to accept DIY used oil, NORA believes that generators "will be prohibited by contract with collectors/marketers [of used oil] from permitting anyone to deposit material in a used oil tank. The risk of taking in quantities of solvents, pesticides, and other contaminants would be too great and the recycler/marketer would be at risk."

Another way of approaching the DIY oil collection problem is through on-site testing. According to John Fok, regulatory analyst with KTI, technology is evolving toward the possibility of tank testing by the collectors of used oil. Such technology would enable collectors to determine if crankcase oil in a dealer's tank were clean. (Dealers with bad experience would be motivated to segregate DIY oil.) Fok says that at present collectors with California Oil Recyclers test each load as it comes into the processing and re-refinery facilities.

The New EPA Plan

Sensitive to the environmental impairment liability insurance issue, the EPA is seeking a compromise solution that would have a minimal impact on clean used oil generators, while setting in place a mechanism to regulate contaminated used oil generators. The idea is that used oil destined for recycling would not be listed as a hazardous waste--nor would small generators like service stations be required to register as hazardous waste facilities--but management standards would be required similar to those applicable to a fully regulated hazardous waste generator.

The impact of such a fall-back approach to the regulatory management of used oil is currently under study at the EPA; the period for comments closed on April 9th.

Michael Petruska, environmental protection analyst at the EPA'S Waste Treatment Branch observes that the question of environmental impairment liability remains a serious issue under any of the proposals. Petruska emphasizes that EPA regulations do not define liability, but he senses that the language of EPA regulations may influence the way liability is perceived by generators, collectors and underwriters. To the extent that those perceptions cause actors in the used oil management system to take actions contrary to those intended by the regulations, the mere listing of used oil as a "hazardous waste" could be counterproductive, he says.

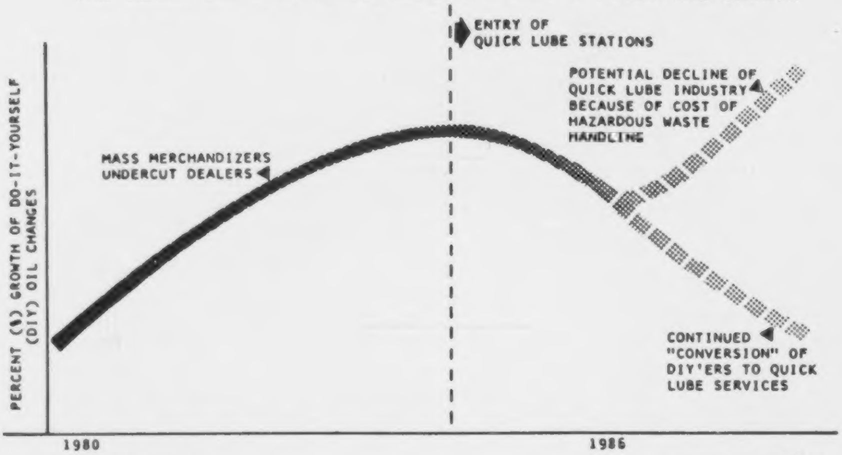
In this vein, Steve Shelton, director of the Southern California Service Station Dealers Association, believes that such a listing would encourage dealers to a) get out of the oil changing business altogether, or b) refuse to accept oil from DIYers--thereby indirectly promoting more unregulated dumping of used oil in trash cans and backyards. Chris Harris, an attorney with Schmeltzer, Aptaker and Sheppard in Washington, notes that if the EPA makes used oil as a listed hazardous waste, then it becomes a "hazardous substance" under the pending Superfund authority. As such, under the joint and several liability doctrine, a generator could be held responsible for 100% of the clean-up costs of an accidental spillage even though he might be only 5% responsible.

Harris believes that the fall in the value of used lube oil in recent weeks has been partly the result of falling crude prices (hence falling prices for virgin oil), but mainly on account of pending EPA regulations. Users, he thinks, will be willing to spend 7-10 cents/gal more for virgin oil simply to avoid the potential liability associated with used oil.

What about the Quick Lubes?

In recent years quick lube service (LL Oct. 4, 1985) has captured 10-15% of the DIYer market, thereby putting a brake on the rate of growth of backyard oil changes. Quick lube industry representatives are concerned that under the proposed EPA hazardous waste regulations their facilities would groan under costly regulatory compliance costs.

THE BLACK CLOUD ON QUICK LUBE INDUSTRY'S POTENTIAL GROWTH



Source: Jiffy Lube

Lundberg Letter Chart

Summary & Conclusion

--Unregulated dumping of used oil by Do-it-Yourselfers (DIYers) in 1985 represented the equivalent of an all-year oil spillage of 16,000 b/d. EPA authority cannot control this oil spillage.

-- The 250 million gallons that DIYers spill represents an already-taxed asset of society worth $60 million annually.

-- A restructuring of the used oil industry is in the wings, as processors and re-refiners are required to segregate hazardous materials from their products.

-- There will be a new market for "hazardous waste fuel," dominated by EPA-blessed cement kilns, asphalt plants and re-refiner facilities.

-- The question of the hour is the outcome of the environment impairment liability issue. While EPA regs do not determine civil liability, proposals to change the regs governing used oil have had a strong (if only temporary) impact on the perceptions of generators, collectors, recyclers and end users.

-- Sooner or later the consumer will have to pay for the added cost of disposing and treating used oil as a hazardous waste or hazardous waste equivalent.

-- At the heart of the DIY regulatory authority paradox is mass merchandiser motor lube oil prices which put dollar signs in the eyes of DIYers and fire in the eyes of gasoline station dealers.

--Let's remember: oil does not wear out--it just gets dirty. DL

#

April 18, 1986

LUNDBERG LETTER-PS

LUNDBERG SURVEY SPOT MARKET ASSESSMENTS 4/18/86
CHANGES SINCE 4/15/86

	GULF COAST				NEW YORK HARBOR				LOS ANGELES HARBOR				CHICAGO	
	LOW	HIGH	CHG	CHG	LOW	HIGH	CHG	CHG	LOW	HIGH	CHG.	CHG	LOW	HIGH
PREM UNLEADED	49.25	50.35	-0.25	-0.45	53.00	54.00		-3.00	72.00	74.00	1.50	1.50		
REG UNLEADED	45.50	46.25	0.50	0.65	46.50	47.85	2.00	1.10	68.00	70.00	1.50	1.50	46.35	47.00
REG LEADED	46.00	46.60	1.00	0.80	47.00	47.85	2.00	0.85	64.00	66.00	1.00	1.00	46.35	47.00
JET KEROSENE	38.00	38.60	-1.25	-1.90	45.00	46.00			44.00	46.00	-4.00		41.85	42.60
NO.2 (HIGH SULFUR)	37.50	38.10	-1.25	-1.90	43.00	44.00		-1.00	37.00	38.00		-1.00		
NO.2 (LOW SULFUR)														
180 CST	10.80	11.10		-0.15	13.45		-0.15		9.70		-0.45			
BUNKER C	10.70	10.75	-0.05	-0.35	12.65		-0.30		9.50		-0.30			

180 CST AND BUNKER C ARE IN $/BBL.

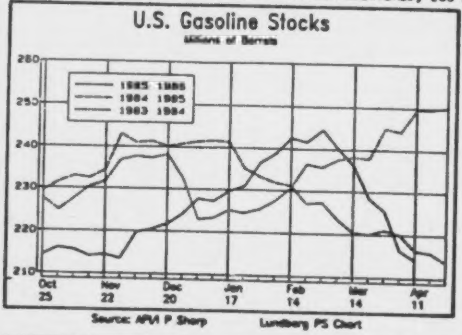
SPOT CRUDE OILS
changes since 4/15/86

	PRICE RANGE		CHANGES		
	LOW	HIGH	LOW	HIGH	
DUBAI	10.70				FOB
OMAN	11.25				FOB
BRENT	12.30		-0.30		FOB
WTI	11.75	12.25	-0.90	-1.00	FOB
WTS	11.35	11.85	-0.70	-0.80	FOB
LLS	12.25	12.75	-0.90	-1.00	FOB

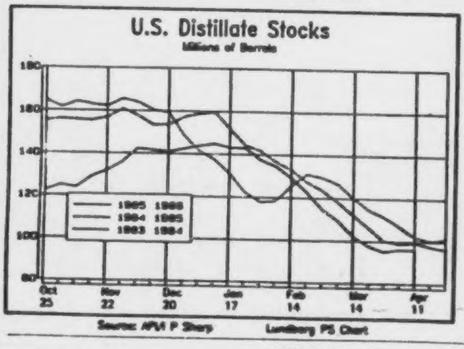
	PRICE RANGE		CHANGES	
	LOW	HIGH	LOW	HIGH
* HUNTINGTON BEACH	8.00	8.50		
** KERN RIVER	6.00	6.50		
*** LINE 63	9.50	10.00		
**** NORTH SLOPE	10.00	10.50	-1.00	
***** THUMS	8.00	8.50		
ANS GULF	10.95	11.45	-1.05	-1.15

* 20° GRAVITY, AT THE LEASE
** 13° GRAVITY, AT STATION 36
*** 28° GRAVITY, AT HYNES STATION
**** 27° GRAVITY, DELIVERED, W. COAST
***** 17° GRAVITY

THE ABOVE SPOT MARKET DATA ARE AVAILABLE ON-LINE WITH HISTORY THROUGH I.P. SHARP ASSOC.
NO. 6 FUEL OIL .5% SULFUR, TRUCK & TRAILER DELIVERED, LOS ANGELES, N.A.



Source: API/I P Sharp Lundberg PS Chart



Source: API/I P Sharp Lundberg PS Chart

	IMPORTS		PRODUCTION	
	4/11/86	4/12/85	4/11/86	4/12/85
Crude	4,153	2,067	8,801	8,846
Mogas	371	211	6,338	6,315
No Lead	351	142	4,478	4,014
Kero	7	7	993	1,008
Dist.	160	340	2,796	2,465
Resid.	821	282	966	943

(Daily averages, in thousands of barrels)

API Report for April 11, 1986

REFINERY UTILIZATION

	Percent Operation
4/11/86	80.00
4/04/86	76.60
4/12/85	76.80

STOCKS

	Mogas	No Lead	Jet Kero	Dist.	Resid.
PADD 1	62,622	38,604	9,732	33,150	15,357
4/04/86	63,187	37,619	11,317	34,166	15,781
4/12/85	57,052	30,714	8,304	33,692	19,346
PADD 2	62,615	33,072	9,457	28,137	3,268
4/04/86	64,301	33,068	10,047	27,891	3,289
4/12/85	64,335	29,845	7,993	31,126	3,800
PADD 3	54,688	25,419	13,026	22,121	9,901
4/04/86	54,533	26,144	12,894	21,795	9,744
4/12/85	61,143	28,273	11,815	21,889	10,546
PADD 4	7,584	2,477	833	2,638	400
4/04/86	7,757	2,647	800	2,320	439
4/12/85	7,785	2,278	827	2,706	501
PADD 5	26,568	11,673	5,862	10,014	8,927
4/04/86	26,615	11,628	6,471	10,157	9,821
4/12/85	25,999	10,634	6,175	9,978	9,079
U.S.	214,077	111,245	38,910	96,060	38,053
4/04/86	216,393	111,106	41,537	96,129	39,074
4/12/85	214,316	101,744	35,114	99,391	43,272

Source: API / I.P. Sharp

PS Staff: Patrice Bowman-Bain, Bob Sharp, Vivian Leal, Stephen B. Gellen
P.O. Box 3996, North Hollywood, CA 91609-0996. (818) 769-5111 TWX 1-910-499-2739
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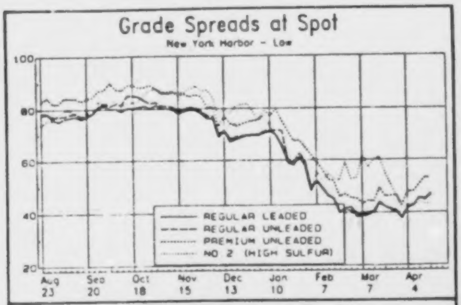
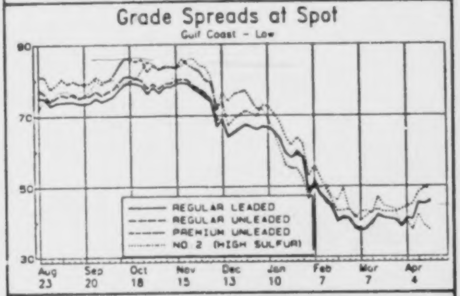
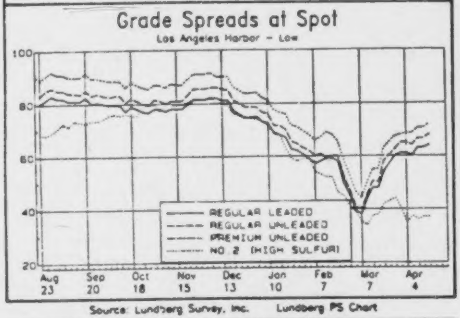

Grade Spreads at Spot

New York Harbor - Low


Grade Spreads at Spot

Gulf Coast - Low


Grade Spreads at Spot

Los Angeles Harbor - Low

Source: Lundberg Survey, Inc. Lundberg PS Chart

DIESEL WEIGHTED PRICE AVERAGES
As of 4/11/86

		RETAIL	WHOLESALE	
PADD 1	FS	117.20	T	49.60
	SS	100.63	R	53.07
PADD 2	FS	114.03	T	50.78
	SS	100.76	R	50.29
PADD 3	FS	113.77	T	48.54
	SS	95.54	R	47.96
PADD 4	FS	108.28	T	51.45
	SS	93.59	R	52.07
PADD 5	FS	115.78	T	47.15
	SS	100.86	R	45.75
U.S.	FS	115.31	T	49.37
	SS	99.37	R	50.19

FS = Full service SS = Self Serve
T = Term branded R = Rack unbranded
SOURCE: LUNDBERG SURVEY

ETHANOL FUEL PRICE POSTINGS
4/17/86

	Price	Chg.	FOB
Beacon Oil	n.a.		Redwood City, CA
	n.a.		San Jose, Bay Area & Sacramento, CA
Koch Oil (4/18/86)	1.09		Bettendorf, IA
	1.09		Davenport, IA
	1.18	-.05	Pine Bend, MN
	1.18	-.05	St. Paul, MN
	1.25		Green Bay, WI
	0.985	+.015	Detroit, MI
	1.00	+.02	Niles, MI
	1.18		Houston, TX
Parallel Prod.	n.a.		Winters, CA
Raven Alc Dis.	closed plant		Selma, CA
Martin Oil	1.08	-.03	Chicago, IL

(Source: LUNDBERG SURVEY)

ETHANOL FUEL PRICE POSTINGS
(Prices for 4/16/86 Change since 4/9/86)

Supplier	Price	Chg.	FOB
Dyno Oil	1.13		Storm Lake, IA
	1.13		Milford, IA
	1.13		Sioux City, IA
	1.13		Des Moines, IA
Georgia Pac.	1.25		Bellingham, WA
High Plains	1.21		Wichita, KS
Midwest Grain	1.09	-.06	Pekin, IL
So. Pt. Eth.	1.17		Cincinnati, OH
	1.24	+.02	South Point, OH
	n.a		Baltimore, MD

ADDITIVES POSTED PRICES -- GULF COAST
(Prices 4/16/86 Chg. since 4/9/86

	Price	Chg.
METHANOL		
Spot: Barges	35.0-36.0 cts	-.01/-.02
Contract: Cars, trucks	38.0-39.0 cts	/-.01
COSOLVENTS		
C4 Alcohols	$0.90	
Isobutanol	$0.97	
Isopropanol (99%)	$1.00	
BLENDSTOCKS		
Benzene	$0.63-0.64	+.05/+.02
Toluene	$0.61-0.62	-.01/-.03
Xylene	$0.62-0.63	/-.02
MTBE	$0.58-0.60	/+.02

(Source: ALCOHOL WEEK)

LUNDBERG GASOLINE PRICE REPORT
U.S. WEIGHTED AVERAGES 4/11/86

	Retail	Whlsl	Margin
FULL SERVE			
Regular Leaded	105.74	51.61	31.42
Regular Unleaded	111.91	53.23	35.97
Premium Leaded	130.58	76.11	31.76
Premium Unleaded	121.19	60.00	38.48
SELF SERVE			
Regular Leaded	76.68	50.94	3.03
Regular Unleaded	82.57	52.52	7.34
Premium Leaded	103.61	76.05	4.85
Premium Unleaded	98.06	59.17	16.18
AVERAGES			
Full Serve	111.79	54.15	34.94
Self Serve	83.76	53.43	7.62
Overall	90.16	53.59	13.86

Retail includes taxes; Wholesale is dealer buying price and excludes taxes; Apparent Dealer Margins are gross exc. taxes.

Source: API/I P Sharp Lundberg PS Chart

LUNDBERG GASOLINE RETAIL PRICE AVERAGE, CASH & CREDIT COMBINED, APRIL 11, 1986

		RETAIL AVERAGE PRICES			
		REGULAR		PREMIUM	
		LEADED	UNLEADED	LEADED	UNLEADED
ALBUQUERQUE, NM	F	109.90	114.24		124.40
	S	77.54	82.49		95.77
ATLANTA, GA	F	112.52	122.07		133.67
	S	68.74	77.87		97.65
BALTIMORE, MD	F	124.30	130.44		139.13
	S	83.28	87.61		102.16
BIRMINGHAM, AL	F	120.94	126.90		133.98
	S	79.84	87.52		104.48
BOSTON, MA	F	92.49	99.48		112.58
	S	82.11	89.07		103.25
CHARLOTTE, NC	F	108.23	114.42		123.76
	S	71.61	76.49		95.12
DENVER, CO	F	110.70	116.60		126.81
	S	72.72	79.58		91.62
EL PASO, TX	F	98.36	103.82		111.84
	S	75.01	77.72		87.87
FRESNO, CA	F	119.50	130.66	136.76	141.88
	S	81.54	92.69	116.66	110.71
HOUSTON, TX	F	114.82	119.95		127.32
	S	68.77	71.74		95.10
JACKSON, MS	F	120.21	125.13		133.28
	S	77.29	85.88		100.23
LAS VEGAS, NV	F	134.96	144.64	153.11	152.30
	S	89.53	98.41	135.23	115.79
LOS ANGELES, CA	F	124.69	133.78	138.17	143.58
	S	84.60	94.09	122.07	111.78
MIAMI, FL	F	120.93	128.40		137.18
	S	78.91	85.03		96.04
NORFOLK, VA	F	118.26	123.53		134.23
	S	75.88	80.60		95.70
PORTLAND, OR	F	102.15	110.56		122.63
	S	78.67	87.87		103.76
ROCHESTER, NY	F	97.12	102.29		113.99
	S	82.82	86.74		98.93
SAN DIEGO, CA	F	126.98	135.81	142.97	145.27
	S	88.34	98.02	129.98	116.19
SEATTLE, WA	F	120.44	126.16		135.67
	S	80.88	89.72		104.96
ST LOUIS, MO	F	105.15	110.48		120.68
	S	66.46	71.21		92.02
TAMPA/ST PETE, FL	F	123.30	129.61		136.67
	S	78.45	83.75		97.22
WILMINGTON, DE	F	102.98	106.04		116.28
	S	72.40	75.51		94.62

		RETAIL AVERAGE PRICES			
		REGULAR		PREMIUM	
		LEADED	UNLEADED	LEADED	UNLEADED
ANCHORAGE, AK	F	135.07	142.30		149.94
	S	91.12	101.06		116.21
BAKERSFIELD, CA	F	115.36	129.13	136.73	136.78
	S	84.16	95.95	116.28	110.98
BILLINGS, MT	F	106.61	105.23		120.30
	S	79.07	79.07		87.13
BOISE, ID	F	115.32	120.02		131.22
	S	85.72	90.20		111.91
CHARLESTON, WV	F	114.12	118.68		126.79
	S	78.38	84.33		98.63
CHICAGO, IL	F	116.56	124.66		139.58
	S	78.52	84.77		110.84
DES MOINES, IA	F	115.29	123.00		98.00
	S	78.57	85.28		80.50
FARGO, ND	F	124.23	129.01		135.65
	S	74.19	78.19		81.23
HONOLULU, HI	F	148.14	153.57	156.63	162.80
	S	106.21	117.48	137.87	132.34
INDIANAPOLIS, IN	F	119.51	125.41		136.40
	S	73.03	77.41		100.88
JACKSONVILLE, FL	F	129.13	135.66		144.94
	S	74.46	82.74		99.07
LITTLE ROCK, AR	F	96.40	105.07		116.23
	S	72.74	79.01		93.87
LOUISVILLE, KY	F	103.69	109.69		120.07
	S	67.50	72.75		90.52
NEWARK, NJ	F	78.00	82.23		98.98
	S				
PHOENIX, AZ	F	124.56	131.70		139.57
	S	87.14	96.02		113.46
RENO, NV	F	122.01	135.48	153.90	144.97
	S	84.41	94.92	132.50	108.04
SACRAMENTO, CA	F	124.70	132.91	136.81	141.96
	S	83.41	92.98	120.76	106.78
SAN FRANCISCO, CA	F	121.21	130.50	136.99	140.98
	S	78.12	87.97	115.05	105.33
SPOKANE, WA	F	121.33	127.27		141.11
	S	85.09	93.31		107.33
STOCKTON, CA	F	119.51	129.17	141.57	139.37
	S	77.26	86.59	116.90	101.77
TUCSON, AZ	F	119.78	128.58		138.33
	S	91.22	100.07		118.35

F = FULL-SERVICE, S = SELF-SERVICE AND MINI-SERVICE. NO SELF-SERVICE IN OREGON OR NEW JERSEY.
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LUNDBERG LETTER

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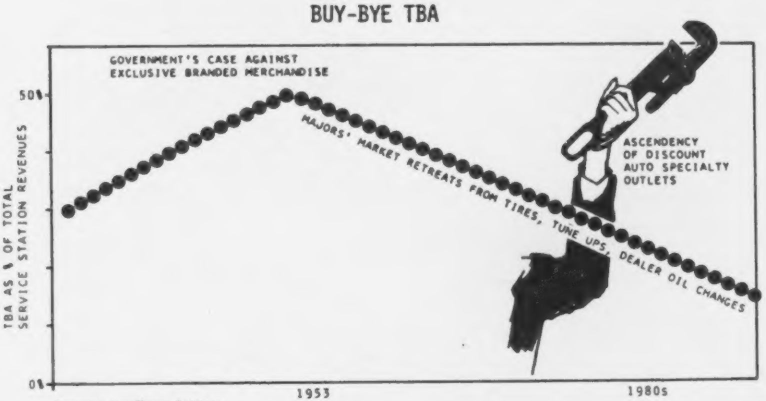
APRIL 25, 1986

DEALER SURVIVAL IN THE LUBE OIL BUSINESS

BUY-BYE TBA



Source: Lundberg Letter

EPA's quandary: How to regulate and control the sale of (contaminated) used oil as a commercial heating fuel while, at the same time, promote used oil recycling by the automotive sector. Should motorists who change their own oil be encouraged to use their service stations as neighborhood collection centers for used oil? Will dealers, in turn, look upon used oil recycling as a public service and as an avenue for renewed oil sales?

But if used oil is listed as a "hazardous waste"--or is so perceived by liability insurance underwriters--dealers could conclude that the additional costs of handling hazardous-equivalent waste are not worth the candle, and further withdraw from what once was an important element of their TBA business (oil changes). They might then commence refusing motorists' crankcase drainings for recycling. Such an outcome of policy-making would be tragic.

Dan Lundberg APR Publisher
Contributing Editors John Ayling Mark Emond Jan C Lundberg Graphics Chu Shaw Business Manager Nella B Shelton Production Craig P Hardin

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Thesis: Dealers and jobbers should defend their share of the oil change market. --Dan Lundberg.

DEALER SURVIVAL IN THE LUBE OIL BUSINESS

What's Behind the Loss of Dealer's Market Share in Oil Changes?

The dealer has four powerful competitors for his share of the oil-change and lube service market:

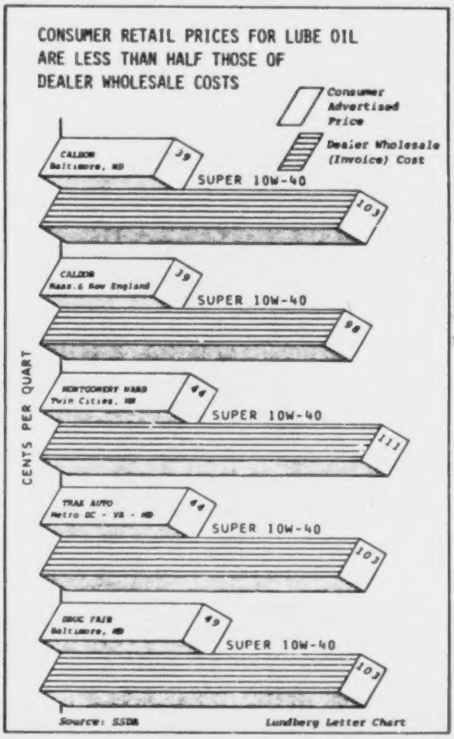
The motorist-cum-mechanic (MCM) who feels that adding or changing one's own oil and filter complements one's taste in yogurt and mineral water. MCMs account for over half the market.

The new car dealer whose warranty policy and sophisticated service infectiously captures the repeat service business of the new-car buyer.

A burgeoning competitor is the quick lube service. Where a dealer might change 300 gallons of oil during a month, a quick lube station changes 3,000 gallons.

A fourth rival is the independent garage that provides an oil change that is included in the transaction.

Dealers can't compete on price alone against the MCMs who, as the chart at the right shows, buy oil at half the dealer's wholesale costs. Most dealers don't compete very well against quick lube stations that offer instant in-and-out service. Nor do they offer the charisma of specialty "foreign car" garages that underprice the service departments of authorized new car dealerships.



Source: SSDA

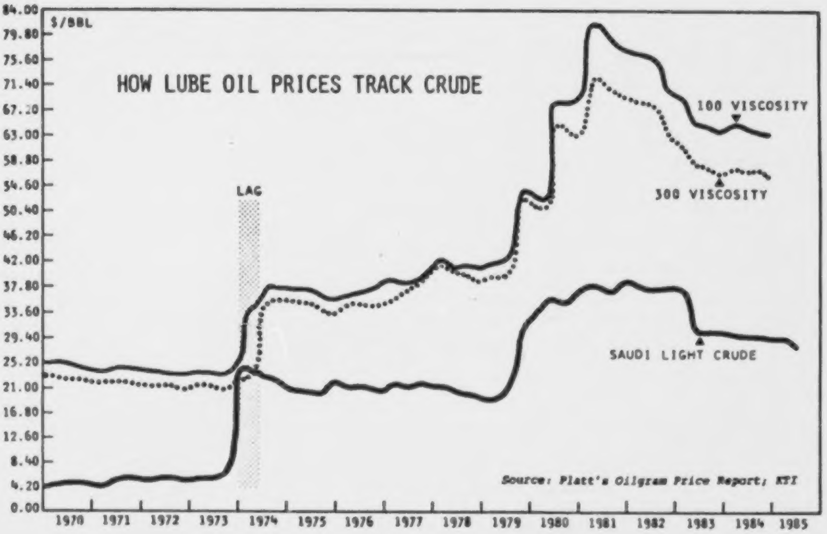
Lundberg Letter Chart

There are other, less publicized reasons why dealers don't compete with MCMs on price: besides being at a sharp disadvantage in direct acquisition cost, dealers have indirect interest and storage expenses. The lessee dealer whose lease is up for renewal (or transfer) is often required to buy a large stock of lube oil. One branded dealer told Lundberg Letter that "You won't see it anywhere in writing, but I was required to buy sixty cases of the Company's highest price oil upon taking over the dealership. For my size station--80,000 gallons a month--this was a ten year supply." The dealer said that he sold twenty cases at--or below--cost. "My $12,000 investment in oil inventory was costing me $1,000/month in finance and storage costs."

The motorist may think that the dealer is trying to rip him off with his higher-than-discount-house oil prices.

> An oil change for a 1985 Audi 5000 at a major dealer station in San Francisco on April 23, 1986, cost $33.53: $10.50 ($2.10/qt) for 10W-50 oil, $12.98 for the filter, $8.50 labor, and $1.55 tax. (Checking all fluid levels--called "lube service"--would have cost an additional $12.50.) At the Grand Auto Service Center in North Hollywood a standard price is $18.95, while at a nearby U Save Auto Parts, the filter would have cost $3.95 and 5W-30 oil $5.60 ($1.12/qt).

To some extent lube oil prices live in a world of their own. Historically, they have responded to upward movements in crude prices (see chart below).



Source: Platt's Oilgram Price Report; KTI

Refiners and re-refiners of lube oil are insulated from public demands for lower lube oil prices. Lori Klein, a market analyst with a leading re-refining conglomerate, tracks retail oil prices against crude acquisition costs. The chart on her wall covering the past six months shows crude prices falling sharply while retail lube prices held steady for three months, and then gave ground somewhat.

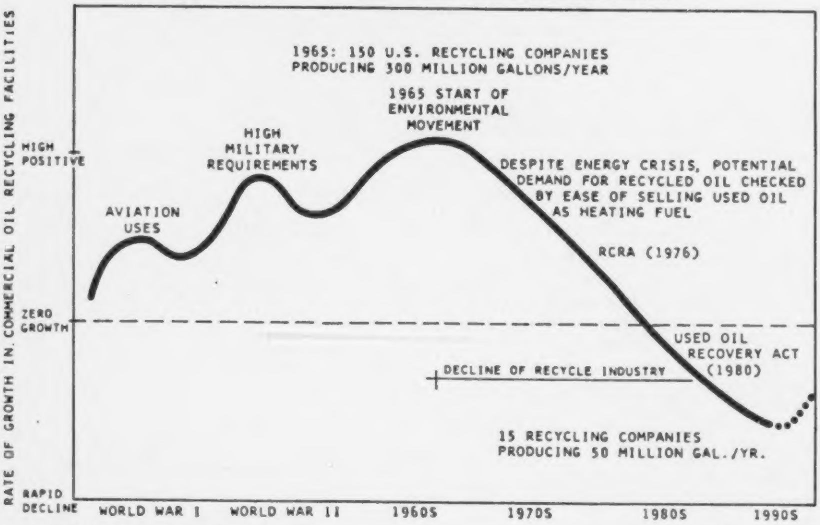
> "The consumer senses a direct marketprice relationship between crude oil and gasoline, but he usually doesn't perceive a parallel relationship between crude oil bought by a refinery and the crankcase oil he buys for his car," says her colleague John Fok.

The dealer, therefore, can anticipate that lube oil prices will not fall as dramatically as crude oil prices have fallen recently, and that there will continue to be large differences between his prices for lube oil and those in the nearby discount house. What is likely to change is the dealer's attitude toward used oil.

1986: Congestion at the End of the Funnel

This year will see a momentous step taken toward the standardization of the way in which the U.S. economy deals with used oil from automotive, commercial and industrial sources. Decisions by the EPA are likely to set the course for corporate planning in the reprocessing and re-refinery industries for decades. The same decisions will affect the way service stations handle their used oil and oil-change businesses. These decisions will have the effect of causing more used oil to flow into the used oil management system. Such new, higher volumes should reverse the fifteen-year decline in the recycling business (see chart below).

CYCLES IN THE OIL RECYCLING INDUSTRY:
BAROMETER OF NATIONAL ENERGY CONSCIOUSNESS

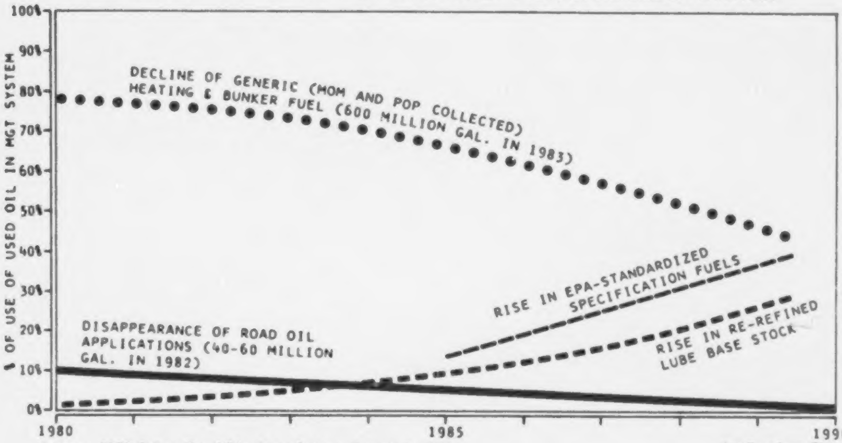


Data Source: Dennis W. Brinkman *Lundberg Letter Chart*

First, the Good News

If the security of the service station network is left out of the picture, the EPA's attempts to standardize used oil management practices will have a beneficial effect on health and the environment. The wasteful, and often harmful, disposal of used oil by burning will diminish. It will mean that "collectors that pick up used oil at one end of the street won't be able to sell it legally at the other end," observes Dr. Dennis Brinkman, the U.S. authority on waste hydrocarbons recycling with the National Institute of Petroleum and Energy Research (NIPER). The decline of used oil as heating fuel will make more of it available for reprocessing and re-refining. (See chart below.)

WHAT'S ON THE HORIZON IN THE USED OIL MANAGEMENT SYSTEM



Source: 1983 Data, Franklin Associates; Forecast, KTI *Lundberg Letter Chart*

> Brinkman notes that many European countries collect up to 65% of the available waste oil. Most of this volume is re-refined into lubricants. Europeans are motivated by low domestic crude supply and high costs of imports. In the United States waste hydrocarbons march to a different drumbeat: here, according to NIPER estimates, over 500 million gallons of used lubricating oil from industrial and automotive sources go directly into the environment.

Collectors will have to take used oil to straight-shooting reprocessors or re-refiners who will remove toxic and hazardous substances prior to its re-entry into the marketplace.

There is another application for used oil. The EPA's notice in the Federal Register of November 25, 1985, permits used oil to be burned on the premises of businesses that generate it. Included in the concept of on-premise used oil is oil collected from Do-It-Yourself (DIY) oil changers. Lee Singer, President of Waste Oil Manufacturers Association, told Lundberg Letter that he estimates that 5-10% of used oil at automotive facilities is burned in waste oil heaters. Singer says that waste oil heaters have been in use in Europe since 1960, but their use in the United States did not begin until 1976. Small waste oil heaters suitable for service station use have a capacity of 125,000 BTU/hr. Such heaters, which cost between $800-$4,000, have a payback period of one heating season, according to Singer.

Entry of Organized Crime?

Not-for-attribution industry sources say that portions of the used oil collection and instant processing businesses are controlled by professional off-spec competitors who, at present, are not subjected to regulatory policing. This issue was brought up in public at an EPA hearing at the World Trade Center in New York City in 1985 at which the practice of collecting used oil and selling it as virgin #6 fuel oil was discussed. Dealers, comments Singer, who attended the meetings, insisted on blue-ribbon credentials as bonafide businesses.

On the other side of the country, in the Los Angeles harbor, an estimated 70 million gallons a month of used oil--some of it blended with virgin oil--are sold as "cutter stock" at a good discount under virgin or re-refined products.

Now the Bad News

The service station is the primary contact that MCMs have with the nation's waste oil management system. Anything that reduces that contact will have a multiplied effect on 1) the volumes of MCM used oil injected into the environment, and 2) the integrity and inherent strength of the dealer network in America. The service station dealer that today receives used oil from MCMs does so mainly as a public service--his time is worth a lot more than the 5-20 cents a gallon that he receives for it. If, as many industry observers believe, the dealer will soon be paying 25-50 cents/gal to have his used oil collected, he will pass this cost on to the MCM who, in turn, will be thinking of vacant lots where he can dispose of his used oil for free.

Possible Solutions

How to bring the MCM into the waste oil management system? One idea is to educate the motorist, but at the EPA there are no funds earmarked for such purpose.

Dealers and dealer associations know that motorist fascination with self-service gasoline is more costly than wise. One garage manager said that "If you're going to keep your car any length of time, change your oil every 3,000 miles, not every 7,500 miles as the owner's manual tells you." A Chevron dealer made this case:

> "Automobile transportation is more than a cheap tank of gas: it's having properly inflated tires, sufficient crankcase oil and brake fluids. It's having the right amount of water in the radiator. A self-service oriented motorist should get full service every third or fourth tank. Otherwise he'll pay the difference between full- and self-service gasoline many times over when he's out on the highway and his car breaks down."

"It would take a lot of effort to get this message across," says another dealer. "The message runs counter to that of some major oil companies who want to push gasoline, gasoline, gasoline." These majors, in his view, implicitly are saying that they don't want the inconvenience and potential liability of TBA business, implying that the motorist should go elsewhere for maintenance--it's not in their line of business anymore.

As one dealer instructed his employees:

-- Turn around the distancing between us and the motorist. Meet our customers personally. We're small and we're only selling convenience.

-- Educate our customer about the environmental impact of backyard oil changes and about the false economics of under-maintenance.

-- Tell them you'll accept their used oil for recycling; ask them to let you provide the oil change service (and fluid-level and brake check), and encourage bulk sales opportunities for the "take out" motorist. Ask for the order.

-- Collaborate with our waste oil collector. Let's never cause him to skip us on his route!

-- We're going to watch the re-refined oil market and get into it when sensible.

Sword of Damocles

-- Forthcoming EPA regulations that succeed in diminishing the amount of contaminated used oil from dangerous use as heating oil will be applauded by industry and society.

-- The dealer is not going to welcome gratuitous deposits of used, often contaminated, oil from DIY stiff artists who left what potential profit there was in the transaction on the counter of the nearest discount house. The prospect that the dealer will pay 25 cents/gallon to have used oil siphoned off his hands will provoke a spiral of alienation between dealer and DIY motorist, thereby further weakening dealer network viability.

-- It follows that if such regulations damage the dealer's ability, which includes his financial incentive, to collect for recycling used oil generated by amateur mechanics, they will end up provoking increased levels of irresponsible used oil disposal.

> Dealers, jobbers and motorists have a civic obligation to defend their own self-interests and advocate sound environmental and economic policy: The stakes are high, for wrong-headed EPA judgments and ensuing regulations in the area of used oil management will increase the night-time trashing of our environment. It's a Damoclean moment.

#

To correct our oversight:

Our L/L of 4/11/86 reported Shell's company-operated station total had increased from 235 to 300 in number. The "gain" closely approximated the company-ops acquired by Shell in the acquisition of ARCO stations in the Northeast, and the Wallace Oil outlets in Atlanta. Shell is not embarked upon increasing its company-op sector, but in fact is reevaluating the newly acquired units' eventual status in a network that continues to be committed to independent dealer marketing.

April 25, 1986

LUNDBERG LETTER-PS

LUNDBERG SURVEY SPOT MARKET ASSESSMENTS 4/25/86
CHANGES SINCE 4/22/86

	GULF COAST				NEW YORK HARBOR				LOS ANGELES HARBOR				CHICAGO	
	LOW	HIGH	CHG	CHG	LOW	HIGH	CHG	CHG	LOW	HIGH	CHG	CHG	LOW	HIGH
PREM UNLEADED	55.25	57.75	3.25		58.50	62.00	3.75	6.25	64.50	69.00	-8.00			
REG UNLEADED	51.25	53.75	4.00		53.50	57.00	4.00	6.75	60.00	64.00	-9.00		49.00	
REG LEADED	51.50	54.00	4.25		53.50	57.00	4.75	7.25	56.00	60.00	-9.00		49.00	
JET KEROSENE	42.50	43.50	1.40	1.90	44.00	47.00	-0.50	1.50	51.00	52.00	3.00	1.00		
NO.2 (HIGH SULFUR)	41.00	42.00	1.90	2.65	44.00	47.00	0.50	3.00	38.00	39.00			43.25	44.25
NO.2 (LOW SULFUR)									42.00	44.00				
180 CST	9.85	10.00			13.15	13.30			10.85		0.70			
BUNKER C	9.65				12.50				10.45		0.35			

180 CST AND BUNKER C ARE IN $/BBL.

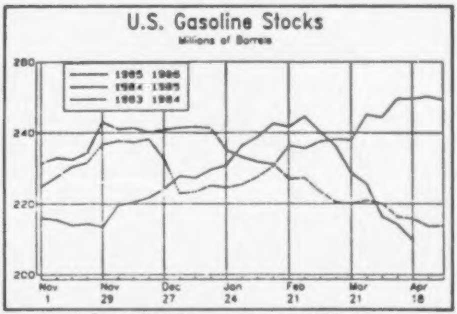
SPOT CRUDE OILS
changes since 4/22/86

	PRICE RANGE		CHANGES		
	LOW	HIGH	LOW	HIGH	
DUBAI	9.50		-0.50		FOB
OMAN	10.00		-0.50		FOB
BRENT	12.00				FOB
WTI	12.50	13.55	-0.25	0.05	FOB
WTS	12.00	13.05	-0.30		FOB
LLS	13.00	14.05	-0.25	0.05	FOB

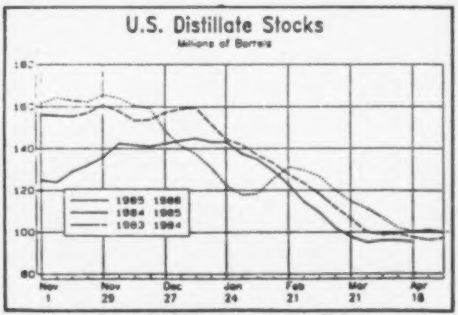
	PRICE RANGE		CHANGES	
	LOW	HIGH	LOW	HIGH
* HUNTINGTON BEACH	8.00	8.50		
** KERN RIVER	6.50	7.00	0.50	0.50
*** LINE 63	10.00	10.50	0.50	
**** NORTH SLOPE	10.50		0.50	
***** THUMS	7.75	8.00		
ANS GULF	11.65	12.70	-0.20	0.10

* 20° GRAVITY, AT THE LEASE ** 13° GRAVITY, AT STATION 36 *** 28° GRAVITY, AT HYNES STATION
**** 27° GRAVITY, DELIVERED, W. COAST ***** 17° GRAVITY

THE ABOVE SPOT MARKET DATA ARE AVAILABLE ON-LINE WITH HISTORY THROUGH I.P. SHARP ASSOC.
NO. 6 FUEL OIL .5% SULFUR, $13.75/BBL., TRUCK & TRAILER DELIVERED, LOS ANGELES.



Source: API/I P Sharp Lundberg PS Chart



Source: API/I P Sharp Lundberg PS Chart

	IMPORTS		PRODUCTION	
	4/18/86	4/19/85	4/18/86	4/19/85
Crude	3,193	3,409	8,801	8,907
Mogas	183	287	6,456	6,467
No Lead	159	194	4,464	4,149
Kero	37		944	916
Dist.	89	391	2,803	2,474
Resid.	289	181	920	930

(Daily averages, in thousands of barrels)

API Report for April 18, 1986

REFINERY UTILIZATION

	Percent Operation
4/18/86	83.10
4/11/86	80.00
4/19/85	76.80

STOCKS

	Mogas	No Lead	Jet Kero	Dist.	Resid.
PADD 1	60,427	37,282	10,225	32,489	15,084
4/11/86	62,622	38,604	9,732	33,150	15,557
4/19/85	59,149	32,046	7,233	33,618	19,896
PADD 2	61,123	32,289	9,140	28,822	3,115
4/11/86	62,654	33,273	9,457	28,137	3,268
4/19/85	62,923	29,671	8,076	29,514	3,489
PADD 3	54,031	26,241	12,876	21,761	10,086
4/11/86	54,608	25,419	13,026	22,121	9,901
4/19/85	58,697	28,210	12,814	22,320	10,906
PADD 4	7,396	2,447	866	2,583	409
4/11/86	7,384	2,477	833	2,638	400
4/19/85	7,763	2,293	767	2,582	505
PADD 5	26,669	12,104	6,563	9,744	8,728
4/11/86	26,568	11,673	5,761	10,014	8,927
4/19/85	27,300	11,199	6,226	9,506	10,020
U.S.	209,646	110,363	39,670	95,399	37,422
4/11/86	214,116	111,446	38,809	96,060	38,053
4/19/85	215,832	103,421	35,116	97,540	44,816

Source: API / I.P. Sharp

PS Staff: Patricia Bowman-Stein, Bob Sharp, Vivian Leaf, Stephen B. Gellert
P.O. Box 3996, North Hollywood, CA 91609-0996 (818) 768-5111 TWX 1-910-498-2739

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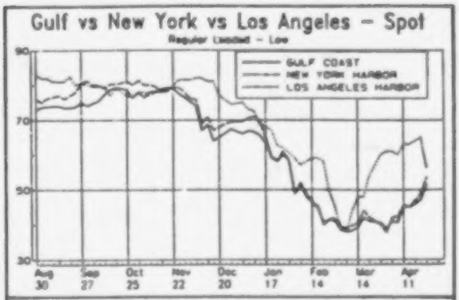
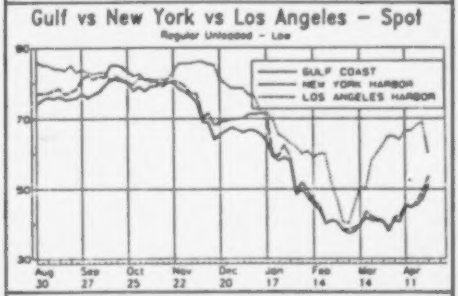
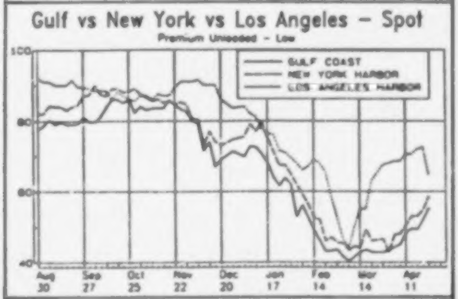


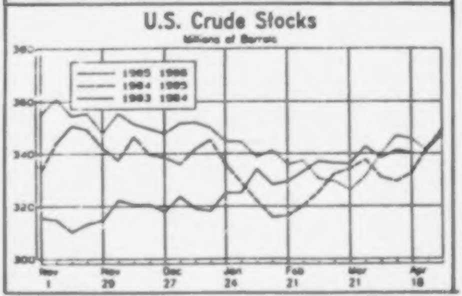
Gulf vs New York vs Los Angeles – Spot
Regular Leaded – Low



Gulf vs New York vs Los Angeles – Spot
Regular Unleaded – Low



Gulf vs New York vs Los Angeles – Spot
Premium Unleaded – Low



U.S. Crude Stocks
Millions of Barrels

Source: Lundberg Survey Inc.

Lundberg PS Chart

ETHANOL FUEL PRICE POSTINGS
4/24/86

	Price	Chg.	FOB
Beacon Oil	1.48		Redwood City, CA
	1.48		San Jose, Bay Area & Sacramento, CA
Koch Oil (4/23/86)	1.12	+.03	Bettendorf, IA
	1.12	+.03	Davenport, IA
	1.18		Pine Bend, MN
	1.18		St. Paul, MN
	1.23		Green Bay, WI
	1.075	+.04	Detroit, MI
	1.035	+.035	Miles, MI
	1.20	+.02	Houston, TX
Parallel Prod.	n.a.		Winters, CA
Martin Oil	1.09	+.01	Chicago, IL

(Source: LUNDBERG SURVEY)

ETHANOL FUEL PRICE POSTINGS
(Prices for 4/23/86 Change since 4/16/86)

Supplier	Price	Chg.	FOB
Dyno Oil	1.15	+.02	Storm Lake, IA
	1.15	+.02	Milford, IA
	1.15	+.02	Sioux City, IA
	1.15	+.02	Des Moines, IA
Georgia Pac.	1.25		Bellingham, WA
High Plains	1.18	-.03	Wichita, KS
Midwest Grain	1.09		Pekin, IL
So. Pt. Eth.	1.17		Cincinnati, OH
	1.24		South Point, OH
	n.a		Baltimore, MD

ADDITIVES POSTED PRICES — GULF COAST
(Prices 4/23/86 Chg. since 4/16/86

	Price	Chg.
METHANOL		
Spot: Barges	34.0-36.0 cts	-.01/
Contract: Cars, trucks	37.0-38.0 cts	-.01
COSOLVENTS		
C4 Alcohols	$0.90	
Isobutanol	$0.97	
Isopropanol (99%)	$1.00	
BLENDSTOCKS		
Benzene	$0.70-0.71	+.07
Toluene	$0.63-0.64	+.02
Xylene	$0.63-0.64	+.01
MTBE	$0.63	+.05/+.03

(Source: ALCOHOL WEEK)

Natural Gas Spot Prices April 25, 1986

APPALACHIAN	2.25-2.85
GULF COAST (GC)	
GC Onshore	1.47-1.65
GC Offshore	1.40-1.60
Louisiana	1.60
(offshore)	1.40
KANSAS	1.60
NW CANADIAN Bdr.	1.35
OKLAHOMA	1.30-1.50
ROCKY MTS.	1.70-1.90
TORONTO CITY GATE	U.S.$2.88*
Vinton, LA Tivoli, TX	No posting for the month of April

* MMBtu wholesale price may change dependent upon trans, tolls, taxes & Alberta border price.

Special Marketing Program: Effective May 1

Appalachian City Gate	2.50/dth
On-Shore Southeast producers	2.0747/dth
Off-Shore Southeast producers	1.9723/dth

PRICES $/MMBtu NET-BACK-TO-WELLHEAD UNLESS NOTED.
NOT ALL PRICES ABOVE ARE AVAILABLE TO ALL BUYERS DUE TO REGULATORY IMPEDIMENTS.
SOURCE: LUNDBERG SURVEY INC.
ALTERNATIVE FUELS DEPT.

COMMENTS BY STATE ENVIRONMENTAL OFFICIALS

New Jersey - Department of Environmental Protection

- Proposals will have a major negative impact on existing recycling program.
- New jersey has small quantity generator exclusion of 1001 gallons per month.

New Hampshire - Department of Health and Human Services

- EPA has not adequately demonstrated that the proposed rules will not discourage the recovery of used oil.
- Fewer recycling centers will be available to receive the used oil. This is especially true for the home owner that has to rely on the local service station etc.

Arkansas - Arkansas Energy Office

- EPA does not fully comprehend the negative consequences of such a classification.
- Sixty percent (60%) of oil sold through discount stores - it will be dumped.

Maine - Department of Environmental Portection

- Piece-meal development of regs are confusing and frustrating.

Oregon - Department of Environmental Quality

- Listing will have a negative impact particulary on recycling of householder oil.
- Funds better spent on more significnat and risky hazardous waste issues.
- Used oil substantially different from hazardous wastes: (1) mostly household generated, (2) substantial number of small generators, (30 collection businessses will buy it unprocessed.
- Nearly all business generated oil is presently recycled.
- Cost of compliance with regulation will cause more dumping and increase risk to human health and the environment.
- Oregon has not had significant incidents of environmental damage stemming from mismanagement by generators.

Missouri - Department of Natural Resources

- Rules are unnecessarily burdensome that will decrease, not increase, recycling, and will increase unsafe disposal methods.

- Used oil reclaimation is a marginally profitable business, impact would not be reasonable and would prohibit methods of recovery state considers safe.
- Particulary against tank standards.

Pennsylvania - Department of Environmental Resources

- EPA failed to consider impact on state sponsored recycling.
- Service stations will have to contend with the stigma of being hazardous waste generators once used oil is listed as a hazardous waste, further eroding any incentive to recycle waste oil.
- "[H]as the potential for causing many service stations to discontinue cooperating in the states used oil program at best, and drive many out of the oil change business at worst.

Florida - -

- On-spec used oil should exempt,)points out inconsistency in listing and burning and blending).

Wisconsin - Department of Natural Resources

- Contains illogical implications because household used oil would be exempt, but if you do try to recycle it, it must be done perfectly.
- We do not believe that imposing complex regulations on generators and transporters of recycled used oil, will benefit the environment.
- It will discourage reycling and lead to increased illegal disposal.
- Generators caught in the middle - required by state law to accept used oil for households and required by federal law to comply with costly operating standards as generators and storage facilities.

Lt. Governor

- Shot-gun approach to regulate all used oil as a hazard to human health and the environment - not justified either by EPA's own testing and data, or other information.
- Approach would be a waste of public and private dollars.

Department of Natural Resources

- Adequate basis for listing all used oil does not exist.
- EPA's data reflects contaminant levels in ADULTERATED OIL, not used oil.
- Oil contaminated through use is entirely different from adulterated oil.

- Has a substantial negative impact - recycling by making used oil a liability rather than an asset.
- Listing will clog already limited capacity for management of legitimate hazardous wastes.
- Adequate regulatory controls already in place to deal with used oil that has been mixed with hazardous wastes.
- Analytic methods currently available for metals in oils are inadequate as EPA and this department worked together in July of 1983 and EPA could not do it then.

California - Several agencies

- Will impair voluntary collection program.
- Collectors such as service stations will not accept used oil due to the liabilities involved.
- Public unacceptance of facilities handling used oil.
- Two large used oil operations were terminated due to state regulation.
  (Note: California comments are very important, as it has misrepresented to Congress that the fact that California has listed used oil and that recycling has not been impacted; thus, a federal decision to list used oil would not adversly impact recycling).

USED OIL RECYCLING AMENDMENT TO SUPERFUND REAUTHORIZATION LEGISLATION
[Section 101(b) of H.R. 2005]

House Passed-Version

(b) HAZARDOUS SUBSTANCES. - Section 101(a)(14)(C) of CERCLA is amended by inserting after "Congress" the following: "and not including used oil that is listed or identified as a hazardous waste under the Solid Waste Disposal Act if such used oil (i) is treated, managed, or recycled in such a way as to remove or render harmless the hazardous constituents contained in such oil or such used oil does not contain hazardous constituents, and (ii) such used oil is in compliance with a final rule promulgated by the Administrator, which rule shall authorize the Administrator to order any corrective action necessary for any release of used oil".

Senate-Passed Version

No provision

Suggested House-Senate Compromise

(b) HAZARDOUS SUBSTANCES. - Section 101(a)(14)(C) of CERCLA is amended by inserting after "Congress" the following: "and not including 'recycled oil' as defined and regulated by the final rules promulgated by the Administrator under section 3014 of the Solid Waste Disposal Act",

Comments

- The condition that the used oil be "treated, managed, or recycled in such a way as to remove or render harmless the hazardous constituents" is unnecessary.

- - Virgin products often contain contaminants, including some constituents considered of concern to EPA in its used oil proposals issued on November 29, 1985 (e.g., benzene and toluene).

- - On November 29, 1985, EPA issued a final rule prohibiting the burning in non-industrial boilers of used oil that does not meet speciification levels for certain hazardous contaminants and flash point. 50 Fed. Reg. 49,164. In the preamble to its final burning rule, the Agency said:

> . . . EPA identified typical contaminants of used oil and proposed specification levels for those compounds found in higher concentrations in used oil than in virgin refined fuel oil and which could also pose a significant health risk when burned . . . . We did not propose specification levels for compounds found in used oil at the same or lower levels than are found in virgin refined fuel oil because users could simply switch to virgin oil to replace the recycled product without any environmental benefit.

50 Fed. Reg. 49,181.

- - Used oil with hazardous constituents below the specification levels can be sold to and burned in non-industrial boilers (e.g., apartment and office buildings) without regulation. EPA believes the specification is "protective under virtually all circumstances." 50 Fed. Reg. 49,180.

- - EPA's regulatory definition of "used oil" excludes used oil that is intentionally mixed with hazardous wastes. Such mixtures are regulated as RCRA subtitle C hazardous wastes and not as used oil.

- - EPA's November 29, 1985 proposal to establish management standards for recycled used oil is designed to minimize health and environmental risks.

- The requirement that EPA's final used oil rule "authorize the Administrator to order any corrective action necessary for any releases of used oil" is redundant.

- - Adequate authority exists under RCRA for EPA to respond to releases of used oil that pose threats to human health and the environment (e.g., section 7003).

- - If used oil is not listed as a RCRA subtitle C hazardous waste, it is subject to regulation as a "regulated substance" under RCRA subtitle I. Subtitle I directs EPA to promulgate regulations for the detection, prevention, and correction of releases from underground stoorage tanks. A pending amendment (section 205) to H.R. 2005 would provide for additional response authorities for clean-ups of releases from certain underground storage tanks.

- - EPA's proposed management standards for recycled used oil include requirements for used oil tanks that are leaking.

- The proposed compromise continues the exclusion from Superfund authorities only for that used oil that is recycled according to EPA rules.

- - EPA's used oil proposals find that land disposal and road oiling are environmentally-unacceptable ways to recycle used oil.

- - EPA's proposed regulatory definition of "recycled oil" excludes used oil intentionally mixed with hazardous wastes.

- - The condition that the Superfund exclusion applies only to used oil that is properly recycled creates a powerful incentive for more used oil to enter the used oil management system.

SSDA
SERVICE STATION DEALERS OF AMERICA

SSDA Position Paper on Waste Oil

One of the least publicized, but most dangerous environmental hazards of recent times is caused by the uncontrolled dumping of waste motor oil by do-it-yourself, (DIY) oil-changers.

Major oil companies have encouraged the DIY'ers by adopting a two-tier marketing program which allows non-service stations to offer motor oil to the public at less than half a service station's "wholesale" cost.

Do-it-yourselfers now account for over 70% of the motor oil sold in the United States, and in 1985 they purchased 575 of the 821 million gallons of oil sold. Of this 575 million gallons, 162 million gallons were burned or leaked, leaving 412 million gallons of used oil to be disposed of.

While service stations recycle virtually all of their used oil, which is exempted from the Hazardous Waste Act, DIY'ers recycle only 14% of this used motor oil, which in 1985 amounted to 57 million gallons out of the 412 million gallons disposed of. Of the 57 million gallons recycled by DIY'ers,, 37 million gallons were handled by service stations.

Used oil recycling by service stations will cease if used oil is declared a hazardous waste, thus subjecting recycling activity to the costs of compliance with RCRA regulations. More importantly, used oil recycling would then be subject to the potential liabilities under CERCLA (Superfund). The risk of liability for upstream recycling activities over which service station dealers have no control over, creates a legal climate too dangerous for used oil recycling activities to continue.

The economics of used oil recycling, a marginally profitable activity, will also be destroyed by listing used oil as a hazardous waste. Projected hikes in garage liability insurance alone will eat up any profits, destroying any incentive for service stations to continue to provide oil change services, or accept DIY motor oil for recycling. The net result will be an increase in pollution due to increased market share and dumping by DIY'ers.

The problem arises because 40% of the DIY used oil will be dumped directly onto the ground or into the sewage systems, a total of 165 million gallons this year. Another 87 million gallons will be placed in trash cans, and then taken to a landfill, where it too will end up in the groundwater. Burning as fuel oil and other miscellaneous uses account for the disposition of the balance of used oil.

Although off-shore spills receive all the publicity, the fact is that 62% of all petroleum-related pollution in the United States is due to used motor oil, most of which ends up in our oceans.

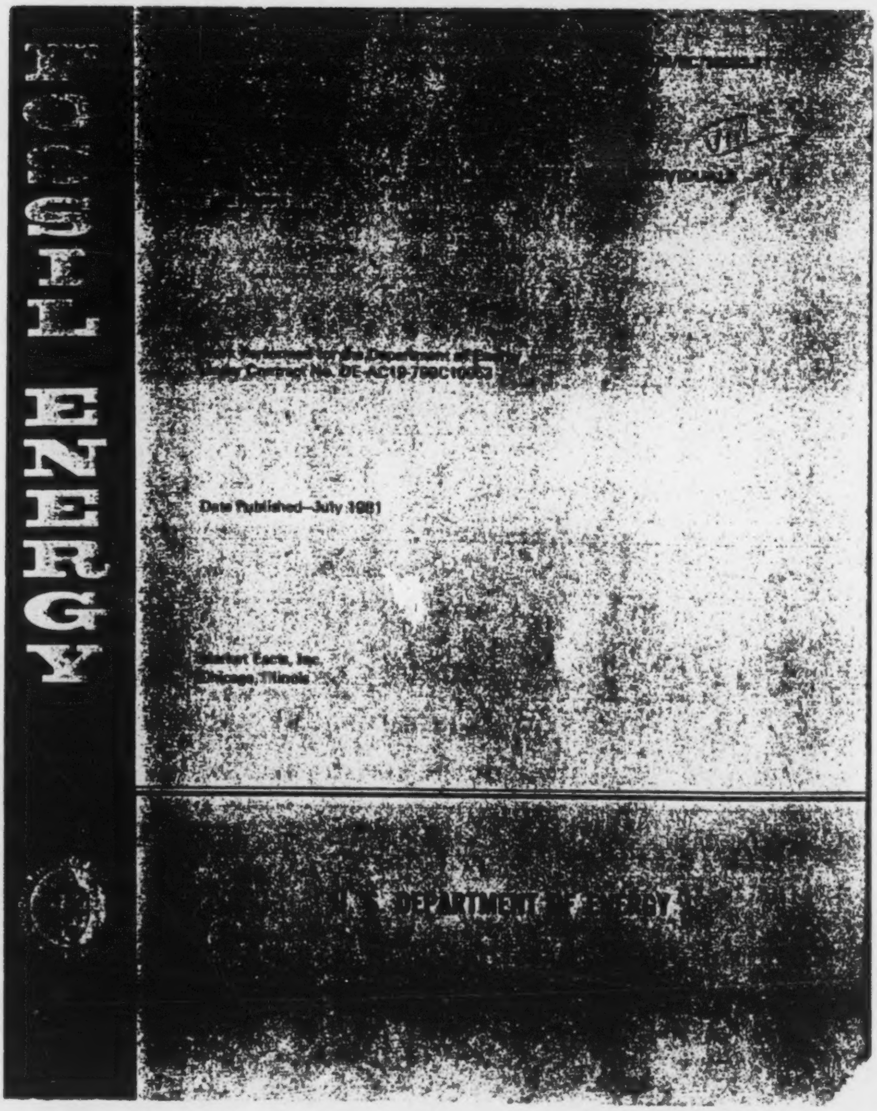
As a result of this problem, states such as Maryland have passed legislation to encourage do-it-yourselfers to return used motor oil to designated recycling centers. Maryland has imposed a $200 penalty for dumping used oil in other than an approved collection center for a first offense, and $1,000 fine and 30 days in jail for a second offense.

New York law mandates that service stations must accept DIY oil. Such laws will be challenged as unconstitutional should used oil be listed as a hazardous waste.

A DOE study indicates that 72% of the oil purchased by DIY'ers would be recycled if the place where the motor oil was purchased had collection facilities for used oil. The amount of recycling facilities continues to dwindle as major oil companies demolish existing facilities in favor of gas-only operations.

The Service Station Dealers of America (SSDA) believes that sound environmental policy should seek to increase the amount of "backyard mechanic" oil brought into the recycling system, as DIY'ers dump more oil than all other segments of the motor oil market sell.

SSDA is very interested in working with Members of Congress interested in developing such a sound policy. Unfortunately, the listing of used oil as a hazardous waste would end any hopes of implementing such a policy.



FOSSIL ENERGY

Work Performed for the Department of Energy
Under Contract No. DE-AC19-79BC10053

Date Published—July 1981

Market Facts, Inc.
Chicago, Illinois

U. S. DEPARTMENT OF ENERGY

Exhibit 15

Perceived Harmfulness of Method of Disposal

Method	Very Harmful	Somewhat Harmful	Not at All Harmful	Rank*
	(%)	(%)	(%)	
Pouring used oil on the ground	51	37	12	2
Pouring down a storm sewer	75	19	5	1
Putting in closed container in the trash	40	36	24	3
Burying used oil in the ground	35	40	24	4
Used to oil down a dirt or asphalt road or driveway	17	35	48	5
Used as a weed killer	35	39	26	4
Used as fuel for oil furnace	38	31	31	4
Used as lubricator or coating for tools	4	10	86	6

Source: Question 43

* Ranked in order of perceived harmfulness.

Exhibit 9

Oil Disposal Methods

	(%)	(%)
Oil was poured on the ground:	40	-
Poured on gravel driveway/road		11
Dumped in backyard		9
Used as a weed killer		6
Took to public dump/landfill		4
Dumped in woods/vacant lot		4
Buried it		3
Poured into storm sewer		2
Let it drain where the car was		1
Oil was put in the trash or garbage to be collected*:	21	
Oil was taken to a gas station or recycled:	14	
Took to gas station to put in used oil drum		9
Gave away for recycling		5
Oil was burned:	4	
Used to start fire/burned it		3
Added to home heating oil		1
Miscellaneous uses:	25	
Used on machinery		8
Kept it		7
Gave away for an unknown purpose		3
Used on animals to keep lice away		1
Used as an insecticide		1
Used as wood treatment		1
Other		4
Base	(1776)	(1776)

Source: Question 18

*If trash is taken to a landfill, disposal of oil through garbage collection falls into the first category -- oil disposed of on the ground.

Exhibit 10

Most Common Methods of Disposing of Used Motor Oil

Rank	Major City	Suburb of a Major City	Small City or Town	Rural
1	Trash 25%	Trash 32%	Trash 20%	Road 18%
2	Gas Station 12%	Gas Station 10%	Road 10%	Machinery 16%
3	Road 10%	Backyard 9%	Gas Station 9%	Trash 9%
4	Backyard 10%	Road 7%	Backyard 8%	Keep it 9%
Base:	(319)	(471)	(496)	(489)

Source: Question 18

APPENDIX B.--PREPARED STATEMENT SUBMITTED BY RICHARD L. McCONNELL, WILEY & REIN, WASHINGTON, DC, ON BEHALF OF RICHARD JAFFRE, VICE PRESIDENT, RAW MATERIALS, CHAPARRAL STEEL CO.

Introduction and Summary

Chaparral Steel Company appreciates this opportunity to address EPA's proposed regulation listing used oil as a hazardous waste under the Resource Conservation and Recovery Act ("RCRA"). If adopted without an exemption for scrap metal, this proposal would threaten the viability of the most modern and efficient segment of the domestic steel industry.

- Chaparral and other steel "mini-mills" recycle scrap metal into steel using modern, efficient technology, and currently account for more than one-fourth of domestic steel production.
- Because small amounts of used oil are associated with virtually all scrap metal available for recycling, EPA's proposal would impose crippling costs which would threaten the viability of the mini-mill recycling industry.
- By sharply curtailing mini-mill operations, EPA's proposal would damage the national economy and undermine the President's Steel Program and Congressional policy.
- The small amounts of used oil associated with scrap metal pose no human or environmental hazard, and simply do not justify regulation.
- Chaparral urgently requests the Subcommittee's assistance in obtaining an administrative or legislative exemption for scrap metal.

The Mini-Mill Recycling Process

Chaparral and other mini-mills utilize electric arc furnaces and continuous casting techniques, in some of the most efficient, technologically advanced, and environmentally sound steel production facilities in the world.

The scrap metal recycled in mini-mills includes machine shop turnings (cuttings, chips, and borings from machining and metal drilling), obsolete or shredded automobiles, railroad cars, oil storage tanks, machinery and farm equipment, and a host of other items. Chaparral purchases scrap ready for use and also shreds car hulks at the plant site. During the shredding process, the ferrous scrap is separated from residual materials (known as "fluff"), consisting principally of upholstery, carpet, glass, rubber, and plastic.

In making steel, the ferrous materials are remelted at 6,000° Fahrenheit in electric arc furnaces. Residuals emitted during the "melt" are collected in a state-of-the-art emission control system as baghouse dust, which is disposed of in accordance with EPA regulations. Thus, any oil contaminants in the scrap charge to the electric furnace cannot possibly present a human or environmental hazard.

Mini-mills produce a variety of steel products including steel bars, structural shapes, and wire rod. Currently, mini-mills account for approximately 75% of domestic rebar production, 75% of domestic bar-size light shapes production, and most domestic wire rod production.

Adverse Impact of EPA's Proposal on the Mini-Mills

By classifying used oil as a hazardous waste, EPA's proposal would effectively require that the scrap metal used as raw material by the mini-mills be handled as a hazardous waste governed by RCRA regulations, and that all of the "fluff" removed from scrap automobiles be disposed of in approved hazardous waste disposal sites.[1] Even if it were possible to comply with these requirements, the cost would be prohibitive.

Currently, Chaparral generates approximately 80,000 tons of fluff annually, and the steel recycling industry generates approximately two million tons of fluff. Even assuming that approved hazardous waste disposal sites were available to receive these materials, the disposal costs alone would threaten the economic survival of Chaparral and other U.S. mini-mills, which individually are relatively small enterprises facing intense competition from foreign steel producers. Assuming that the cost of disposing of these materials in an approved hazardous waste site would be $100 per ton (not including the cost of transporting the materials to distant hazardous waste disposal sites), Chaparral's disposal cost for fluff would be increased to at least $8 million annually, compared to current disposal costs significantly less than $1 million annually. Industry-wide, the additional costs imposed by such a disposal requirement would be at least $200 million annually.

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[1] Under EPA's "mixture rule", the scrap metal and fluff, which are "solid wastes", would be deemed to be "hazardous wastes" because they contain small amounts of used oil.

Moreover, much of the millions of tons of scrap metal recycled annually by the mini-mills would be considered hazardous waste under EPA's mixture rule, and would be subject to RCRA record-keeping and handling requirements. It would probably be literally impossible for mini-mills and scrap suppliers to comply with such requirements for this amount of materials, and in any event it would be prohibitively expensive to do so.

Thus, the practical effect of EPA's proposal would be to sharply curtail the recycling of scrap metal by the mini-mill industry.

Adverse Impact on the National Economy

By crippling the mini-mill segment of the domestic steel industry, EPA's proposal would damage the national economy and undermine the President's Steel Program and Congressional policy.

The modern, efficient technology used by the mini-mills is essential to maintenance of a viable steel industry in the United States. Mini-mills account for a significant and growing proportion of domestic steel production -- currently more than one fourth of domestic production. Unnecessary regulatory burdens on the most efficient segment of the domestic steel industry would increase our national dependence on imported foreign steel, eliminate U.S. jobs, and adversely affect local economies in more than 50 communities throughout the United States where mini-mills are located.

EPA's proposal is contrary to the President's Steel Program and to Congressional policy, seeking to return the domestic steel industry to a "level playing field" with foreign producers and to reduce the level of steel imports. President Ronald Reagan, Steel Import Relief Determination, 49 Fed. Reg. 36813 (Sept. 20, 1984); Steel Import Stabilization Act, 29 U.S.C.A. § 2253, note. Congress has recognized that the domestic steel industry as a whole must modernize its plant and equipment -- as the mini-mills have already done -- in order to meet international competition. 29 U.S.C.A. § 2253, note [§ 802(a)(1)].

Absence of Any Environmental Hazard

The small amounts of used oil associated with scrap metal pose no human or environmental hazard, and are negligible in relation to the more than one billion gallons of used oil that EPA estimates are generated annually in the United States. 50 Fed. Reg. 49265.

In order to provide empirical evidence regarding the amount of used oil associated with scrap metal, Chaparral conducted an inspection survey of crushed automobile bodies purchased by Chaparral as raw material. (Exhibit 1, attached hereto). The survey results show that the average crushed automobile contains between 1.3 and 3.1 quarts of used oil.[2] Thus, the eight million scrap automobiles processed each year by the industry contain between 2.6 million and 6.2 million gallons of used oil.

Much of that oil, however, is not disposed of in ordinary landfills or in the environment at large. Instead, oil adhering to the ferrous components of shredded scrap automobiles, and virtually all of the estimated two million gallons of oil associated with other scrap metal,[3] are subjected to intense heat (approximately 6,000° F) in electric arc remelting furnaces. As noted above, contaminants emitted during the melt are captured in a state-of-the-art control system as baghouse dust, which is already subject to EPA regulation and disposed of in an environmentally sound manner.

Even assuming that all of the used oil associated with scrap automobiles remains with the residual materials ("fluff"), such as upholstery, carpet, glass, rubber, and plastic, that are separated from the ferrous components during recycling, only 2.6 to 6.2 million gallons of oil is contained in the fluff, which is disposed of in landfills.

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[2] Measurements could not be made with great precision since the car bodies were crushed, making disassembly and oil capture difficult. The true average lies somewhere between the 1.3 quart minimum average derived from the study data, and the 3.1 quart maximum average derived from the study data.

[3] Much of the other scrap metal, such as machine shop turnings to which cutting oil adheres, is fed directly into the electric furnace. Thus, virtually all of the used oil associated with that scrap metal is subjected to the electric furnace and is not disposed of in landfills.

The used oil associated with fluff for disposal is far less than the 13.2 million gallons to be disposed of annually in landfills under an "industrial wiper" (i.e., oily rag) exemption proposed by EPA, which EPA recognized would pose "no significant hazard." 50 Fed. Reg. 49258, 49264 (Nov. 29, 1985). Similarly, the oil in fluff is considerably less than the 8.6 million gallons of oil to be disposed of annually under the "sorptive minerals" exemption discussed in EPA's March 10, 1986 notice.[4] As with industrial wipers, sorptive minerals, and EPA's separate proposal for a waste-water exemption,[5] the small amount of used oil associated with fluff from scrap automobiles simply does not justify regulation.

Moreover, the application of EPA's proposal to scrap metal and fluff would cause environmental damage by curtailing or perhaps eliminating the recycling of scrap metal by Chaparral and other mini-mills. The likely result will be the abandonment, every year, of millions of tons of obsolete automobiles, railroad cars, farm equipment, oil storage tanks, and other scrap that presently are collected and recycled in an environmentally sound manner.

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[4] 51 Fed. Reg. 8206, 8207 (March 10, 1986); Comments of the Sorptive Minerals Institute (Feb. 11, 1986).

[5] 50 Fed. Reg. 49258, 49263 (Nov. 29, 1985).

EPA's Failure to Exempt Scrap Metal

While taking no position on the wisdom of EPA's general proposal to list used oil as a hazardous waste, Chaparral and other mini-mill representatives have repeatedly sought an exemption for scrap metal and fluff.[6] However, EPA's March 10, 1986 supplemental notice concerning mixture rule exemptions did not address the scrap metal exemption sought by the mini-mill industry.[7] Nor has the industry been given any assurance that EPA will include the scrap metal exemption in its final rule.

Chaparral urgently requests the Subcommittee's assistance in assuring that an exemption for scrap metal and fluff is implemented, either administratively by EPA or through legislation. We stand ready to provide any additional information upon request.

Respectfully submitted,

Richard Jaffre
Vice President - Raw Materials
Chaparral Steel Company
300 Ward Road
Midlothian, TX 70605

May 28, 1986

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[6] Comments of Chaparral Steel Company on Proposed Listing of Used Oil under RCRA, and Request for Exemption of Scrap Metal and Nonferrous Residues Contaminated With Small Amounts of Used Oil (February 11, 1986); Comments of Steel Bar Mills ASsociation (February 11, 1986); Supplemental Comments on Proposed Listing of Used Oil Under RCRA and Request for Scrap Metal Exemption (February 28, 1986); Meeting Between Representatives of Chaparral Steel Company and EPA Staff (April 8, 1986); Comments of Chaparral Steel Company Pursuant to EPA's Request for Additional Comments on Proposed Listing of Used Oil Under RCRA (April 9, 1986).

[7] 51 Fed. Reg. 8206, 8207 (March 10, 1986).

APPENDIX C.--PREPARED STATEMENT, WITH EXHIBITS, SUBMITTED BY STEPHEN A. VAN DYCK, CHAIRMAN OF THE BOARD, SONAT MARINE INC., PHILADELPHIA, PA

EXECUTIVE SUMMARY

1. Introduction

° Comments address impact of EPA's proposed listing of used oil as a hazardous waste on maritime industry.

° Proposal would discourage recycling of used oil and apply additional RCRA and CERCLA requirements to marine operations with severe commercial effects and no attendant environmental benefits.

° Used oil, when it exhibits hazardous characteristics, is already subject to RCRA and CERCLA. There is no need to subject used oil which is not hazardous to those rules. That is the consequence of the listing proposal.

2. Sonat Marine Operations

° All used oils generated by Sonat Marine's vessels are contained within the vessel and removed to licensed shoreside facilities for recycling and treatment.

° Sonat's independent lab testing shows that our waste oils are not hazardous and EPA's proposal to list all used oil as hazardous waste is unwarranted.

3. Comprehensive Maritime Regulation

° Listing used oil as hazardous would interfere with existing comprehensive marine regulation of used oil by the Coast Guard under domestic law pursuant to Port and Tanker Safety Act, Clean Water Act, and Act to Prevention Pollution from Ships, and the International Convention for the Prevention of Pollution from Ships (MARPOL).

° Listing used oil imposes another layer of liability standards and financial responsibility requirements under RCRA and CERCLA, duplicating liability and insurance provisions of the Clean Water Act.

4. Substantial Impact on Waste Reception Facilities

° Facilities would face significant new regulatory responsibilities and expanded liability upon accepting oil wastes that would now be classified as hazardous.

° Listing used oil is ultimate disincentive for shoreside reception facilities to accept shipboard wastes, creating the possibility of port closures under MARPOL.

5. Current RCRA Requirements

° Existing RCRA standards comprehensively and effectively regulate used oil from vessels when it reaches land.

- 1980 Used Oil Recycling Act and 1984 RCRA Amendments explicitly addressed used oil and directed EPA not to discourage recovery and reuse of used oil.
- Oil should not be subject to RCRA regulation until removed from its vessel--an issue settled in 1980 EPA regulations.
- EPA should allow vessels to contract out duties of a RCRA generator, such as listing and record-keeping, recognizing that all parties in waste generation/removal process remain subject to RCRA enforcement and CERCLA liability, regardless of contractual arrangements.

6. Deficiencies of Listing Proposal

- Sampling evidence upon which EPA bases its proposal does not support contention that all used oil contains toxic constituents or poses risks to human health and environment. Most marine engines are diesel powered. They do not generate used lubricating oils which exhibit hazardous characteristics.
- Classification as hazardous waste improperly shifts onto generator burden of proving specific types of used oil are not hazardous.
- Delisting procedure would be unduly burdensome since each vessel could be considered a separate facility.
- Exemptions provided by EPA are unsatisfactory: EPA has not defined what the *de minimus* exemption amount is.

7. EPA's Regulatory Objective is Flawed

   ° EPA has failed to recognize the counterproductive environmental and economic effects of listing used oil.

   ° Listing would add regulatory compliance costs to recycling, eliminating the market advantage for used oil which is already shrinking with dropping crude oil prices.

   ° Listing would eliminate economic incentive for waste oil resource recovery which is the most efficient and effective of waste minimization strategies.

8. Insurance Problems

   ° Listing would trigger mandatory CERCLA insurance requirements for vessels. This coverage is generally not available and is a duplication of mandatory oil spill insurance.

   ° EPA fails to take into account the current and likely long-term unavailability of environmental impairment liability insurance which affects every stage of the waste management cycle.

9. Conclusion

- ° EPA should completely re-examine proposal and issue supplemental proposal listing only used oil actually exhibiting hazardous characteristics.
- ° EPA should exempt marine oil which is already comprehensively regulated and which has not been shown to be contaminated.

COMMENTS
OF
SONAT MARINE INC.
ON THE ENVIRONMENTAL PROTECTION AGENCY'S
USED OIL PROPOSALS

DOCKET NO. 3001/LISTING OF USED OIL

April 9, 1986

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COMMENTS
OF
SONAT MARINE INC.
ON THE ENVIRONMENTAL PROTECTION AGENCY'S
USED OIL PROPOSALS

I. BACKGROUND

A. Introduction

Sonat Marine is engaged in the marine transportation of crude oil and refined petroleum products by tank barge on the East and Gulf coasts of the United States. The company operates 42 tank barges and 33 tug boats, transporting crude oil and petroleum products from refineries to terminals and distribution facilities. These barges range in size from 20,000 barrels to 260,000 barrels. Our company is the largest independent marine transporter of petroleum in the country.

These comments are submitted in response to the notice of data availability and request for comments in the March 10, 1986 Federal Register, and they supplement our earlier submission made on February 11, 1986 in connection with Docket No. 3001/Listing of Used Oil and Docket No. 3014/Standards of Recycled Oil. We address the impact of the proposal to list used oil as a hazardous waste upon the marine industry. The segment of the marine industry we represent is the coastal tug and tank barge industry, but for the most part our concerns are similar to those of inland carriers and the ocean-going tanker industry.

We believe the proposal to list virtually all used oil as a hazardous waste will not enhance environmentally sound management of used oil as currently practiced throughout the marine industry today. To the contrary, the listing will discourage recycling of used oil, exacerbating waste disposal problems and making the safe management of marine-related oil wastes and residues much more costly and inefficient. Additionally, the application of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA", Pub. L. No. 95-510, 94 stat. 2767, codified in scattered sections of Titles 26, 33, 42 and 49 U.S.C.) to marine operations will unnecessarily duplicate and even impede existing domestic and international efforts to end discharges of oil into the marine environment. The application of CERCLA to the handling of used oils will have profoundly negative commercial impacts with no attendant environmental benefit, particularly by eliminating from the existing used oil processing cycle those companies required by law to obtain additional permits and to maintain evidence of financial responsibility for environmental impairment.

B. Sonat Marine Operations

Sonat Marine's vessels generate waste oils from three separate sources: (1) lubricating oil is drained from the diesel propulsion units on the tug boats and from the ancillary diesel engines used for auxiliary power and cargo pumps which are located on tugs and barges; (2) operational drippings on tug boats are collected through a system of catch pans that prevent the oil from reaching the bilges (which are the spaces at the lowest point of the vessel between transverse framing). These oils are in turn collected in a holding tank and then pumped ashore to reception facilities. Our tank barges have no engine room spaces like tankers, so they have no bilges to collect slops. The bilges contain seawater which may leak in via through-hull fittings, such as propeller shafts. This seawater is segregated from any oil drippings and is pumped back into the ocean in compliance with applicable international (MARPOL) and Coast Guard regulations. Each tug carries a Coast Guard certificate attesting to compliance with these regulations; and (3) our tank barges must periodically be cleaned -- for maintenance, repair, and internal inspection and drydocking for U.S. Coast Guard period inspections; for change in product trades, e.g., from black oil to clean oil; and for removing cargo residues and clingage. This work generally takes place at independent ship cleaning plants or our own fleet centers.

All three waste streams are removed by independent contractors who perform the necessary testing to assure compliance with applicable federal, state and local laws. The oil collected by these contractors is reclaimed after some necessary processing (such as dewatering) by these contractors and beneficially reused as fuel or re-refined lubricant, with a small amount of residue disposed at permitted solid waste disposal sites.

During the course of our operations we also conduct regular sampling and testing of the sources of these waste streams, in addition to that done by our contractors, to verify that our materials do not exhibit any of the characteristics of hazardous waste identified in 40 C.F.R. Subpart C. Each tug has its engine lubricating oils sampled every two weeks and tested by independent laboratories for 21 wear elements and contaminants, including lead, chromium and cadmium.[1] These procedures are designed to detect contaminants that may contribute to undue engine wear and inefficiencies. Hence, our own maintenance regimen detects and prevents the presence of contaminants in the lubricating oils and also ensures our waste oils do not exhibit hazardous characteristics.

Analyses of the oil contained in our holding tanks show these materials to be well within the parameters for used oil set out in Table 1 of the proposal to list used oil as a hazardous waste at 50 Fed. Reg. 49,266 (Nov. 29, 1985). Solvents and degreasers are not present in our tug waste oil as we use household strength water soluble cleaners in our engine room housekeeping activities.

Our cargo tank residues do not fit the definition of used oil since they are not used. 50 Fed. Reg. 49,261. They are not contaminated and therefore have the same chemical profile as virgin products. Contractors may have to do some processing of such residues as the removal operation may require steam cleaning or manual scraping which may introduce water and/or scale from the hull plates. The wastes remaining after this processing have also been tested and found to be nonhazardous.

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[1] No testing is done for arsenic and halogens since the laboratory contractors advise us that these substances do not show up in used marine diesel engine lubricating oil.

Nothing in our experience or in the EPA rulemaking record suggests that our waste streams, which are typical of the marine tug and barge industry, have the levels of contaminants cited by EPA at 50 Fed. Reg. 49,265-66. We are submitting the enclosed analysis of our own sampling experience from an independent testing laboratory because we believe it shows beyond doubt that marine used oil streams from diesel-powered vessels do not have the levels of contamination which EPA has, without basis, attempted to attribute to all used oil streams. This analysis is attached as Exhibit A.

C. Comprehensive Maritime Regulation

Not only do the testing results suggest that EPA's listing of used marine oil is unwarranted, but EPA fails to take cognizance of the interference caused by the listing proposal with existing extensive regulation of oil and oily wastes by domestic and international law. The activities of marine vessels handling oil and oily wastes are primarily regulated by the U.S. Coast Guard through domestic law and international convention, as well as the Resource Conservation and Recovery

Act, Pub. L. No. 94-580, 90 stat. 2795 (1976), as amended, 42 U.S.C. §§ 6901-6987, ("RCRA"). EPA's proposal to list used oil as a hazardous waste appears to have been made without a full understanding of the existing comprehensive regulation of bilge wastes, lubrication oil and cargo tank residues under these laws. Complete analysis of the operational requirements and the liability requirements for vessels, and the existing application of RCRA and CERCLA to the shoreside aspects of vessel operations leads to the conclusion that the further regulation of vessel used oil as a hazardous waste would be unnecessary, do nothing to improve waste management, and would discourage, if not eliminate, recycling -- the optimal method of waste management for used oil.

1. Substantial Liability Implications for Marine Industry

The primary impact of listing used oil as a RCRA hazardous waste is to bring this material within the definition of "hazardous substance" found in section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Hence, vessels with lubricating oils and bilges contaminated with drippings from engines and machinery[2] become subject to CERCLA whether or not this oil or oily water actually exhibits the characteristics of hazardous waste. There clearly is no need for the application of another draconian liability statute to vessels which have used oil on board, either as cargo residue or as an incident of operations.

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[2] Sonat Marine does not have contaminated bilge water because of the catch basins between engine spaces and our bilges.

If an objective of listing used oil is to invoke the liability provisions of CERCLA, this is unnecessary given the comprehensive (and comparable) liability scheme already applicable to vessels and to any releases of oil by vessels. The primary authority governing discharges of oil from vessels is section 311 of the Federal Water Pollution Control Act, Pub. L. No. 92-500, 86 stat. 816 (1972), as amended by the Clean Water Act, Pub. L. No. 95-217, 91 stat. 1566 (1977). 33 U.S.C. § 1321 ("Clean Water Act" or "CWA"). That section applies joint and several liability for costs incurred by the government in cleaning up a spill. The defenses are limited, amounting to a strict liability standard. The liability standard is comparable to that found in CERCLA. The occurrence triggering liability is a release of oil into navigable waters which creates a visible sheen on the water. 40 C.F.R. §§ 110.3, 110.4. Clean up of spills is governed by the terms of the National Contingency Plan established pursuant to section 311(c)(2) of the Clean Water Act, 33 U.S.C. § 1321(c)(2), and section 105 of CERCLA, 42 U.S.C. § 9605, whose provisions are also applicable to hazardous substance spills. 40 C.F.R. Part 300.

To the extent that oil originates from particular sources (a deepwater port, the outer continental shelf or the trans-Alaska pipeline) more comprehensive and specialized liability and compensation provisions of the Deepwater Port Act, 33 U.S.C. §§ 1501-1524, the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331 et seq., and the Trans-Alaska Pipeline Authorization Act, 43 U.S.C. §§ 1651-1655, respectively, are applicable.

Another unnecessary and objectionable aspect of the application of CERCLA to vessels carrying used oil on board is the triggering of the mandatory insurance provisions of section 108 of CERCLA. All vessels, regardless of flag, over 300 gross tons must maintain evidence of financial responsibility under terms prescribed by EPA. 42 U.S.C. § 9608. The lack of availability of this type of coverage will be discussed in greater detail at II.D. below. Aside from the issues of insurance availability and capacity, there is the basic question of redundancy. All the statutes described above have mandatory financial responsibility requirements[1/] which cover the likely costs incurred to clean up the spillage of cargo, bilge wastes or lubricating oils. Troublesome questions also arise about which liability scheme would be applicable to marine vessels, or whether EPA intends vessels to be subject to CERCLA and CWA simultaneously.

3/ Clean Water Act: Inland oil barges - greater of $125/gross ton or $125,000; all other vessels - greater of $150/gross ton or $250,000 (33 U.S.C. § 1321(p); CERCLA: greater of $300/gross ton or $5 million (42 U.S.C. § 9608); Deepwater Port Act: not-to-exceed lesser of $150/gross ton or $20 million (33 U.S.C. §§ 1517(d), (1)); OCSLA: greater of $300/gross ton or $250,000 (43 U.S.C. §§ 1814(g), 1815); Trans-Alaska Pipeline Authorization Act: $14 million (43 U.S.C. § 1653(c)(3)).

2. Adverse Impact of Listing on Marine Operational Requirements

With respect to the regulation of operational and accidental discharges involving used oil, applying the RCRA rules by listing used oil as a hazardous waste adds nothing to existing regulation of vessels since their activities are already subject to RCRA to the extent vessel wastes are actually hazardous. In fact, the listing causes serious conflict with international conventions and Congressional implementing legislation already governing this area.

The authority for the Coast Guard to prevent spills caused by collisions, groundings, rammings, and structural failure, as well as managing waste oil, is found in several sources. In the aggregate this authority is comprehensive and logically obviates the need for any additional regulation or management of used marine oil by EPA under RCRA. The Port and Tanker Safety Act of 1978 (now codified at Ch. 37 of Title 46) delegates broad authority to the Coast Guard to regulate the carriage of liquid dangerous cargoes. This Act anticipated the coming into force of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78), which in turn was implemented by the Act to Prevent Pollution from Ships of 1980. 33 U.S.C. §§ 1901-1911. The implementing regulations are found at 33 C.F.R. Parts 151, 155, 157 and 46 C.F.R. Subchapter D. Along with the Clean Water Act, this body of law comprehensively addresses and stringently regulates the discharge of oil for any reason -- accidental or operational.

With respect to bulk carriage, the design and equipment requirements of 33 C.F.R. Part 157 establish a system of segregated ballast tanks for tankers to ensure that sea water does not become mixed with and contaminated with oil cargo residues as tankers take on ballast to deepen their drafts. In addition, these segregated ballast tanks are, on recently built tankers, located to form a protective void space between the ocean environment and the cargo tanks to minimize the possibility of a release caused by a collision, grounding or ramming.

In order to end the practice of cleaning cargo tanks with sea water, Subpart D of Part 157 requires crude oil washing systems on tank vessels. This is a closed system technology that utilizes the solvent properties of oil taken from the cargo tanks and sprayed under pressure to strip cargo clingage from tank walls and structural members.[4/]

With respect to the regulation of discharges from vessel operations that are not cargo-related, the Coast Guard has issued regulations under 33 C.F.R. Part 155 pursuant to MARPOL 73/78 which establish the requirements (1) for containing lubricating oil discharges (§ 155.310) and bilge slops

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[4/] Our tank barges do not ballast and our tanks are not cleaned with sea water; hence, these barges were not engaged in the practices that led to enactment of these regulations.

(§§ 155.320-155.370); (2) for onboard oily-water separating equipment, bilge alarms and bilge monitoring equipment to detect any malfunctions (§ 155.380); and (3) for pumping, piping and discharge arrangements designed to segregate cargo, ballasting and discharge functions (§§ 155.390-155.440). Record keeping requirements are contained in Subpart C of Part 155 to facilitate enforcement.

Under stringently prescribed circumstances, vessels proceeding en route when less than 12 nautical miles offshore vessels may discharge bilge water with less than 15 ppm oil content; when proceeding more than 12 nautical miles offshore vessels may discharge bilge water that contains less than 100 ppm oil content when the oily-water separating equipment, bilge monitor and bilge alarm are in operation. 33 C.F.R. § 151.09. Exceptions are recognized for emergencies. 33 C.F.R. § 151.11. Ships are required to have International Oil Pollution Prevention Certificates attesting to compliance with these regulations. 33 C.F.R. § 151.19.

While these standards, which implement an international convention, are stringent and complete, EPA has in a public meeting taken the position that the listing of used oil as a hazardous waste (and a hazardous substance for CERCLA purposes) supersedes these laws. Hence, if bilge water becomes contaminated with used oil (listed, although not necessarily meeting one of the four hazardous characteristic tests), EPA takes the position it may not be discharged under these Coast

Guard regulations or under an NPDES permit after treatment. Not only is such a result unwarranted on the facts, but there is no legal basis for EPA to summarily preempt this well-established body of maritime law.

3. Substantial Impact on Waste Reception Regulations for Vessels

In addition to this serious conflict of authority, the interrelationship between the RCRA regulation of used oil and Coast Guard regulation of the shoreside disposition of oily waste is unclear at best and contradictory at worst,

The Coast Guard has issued rules on reception facility requirements for oily waste materials retained on board ships. 50 Fed. Reg. 36,768 (Sept. 9, 1985). These rules implement Annex I Regulation 12 of MARPOL 73/78 which relates to oils and oily wastes. The rules make complete the cycle of keeping oil from entering the marine environment by requiring the oil drippings and slops to be retained on board and returned to qualified shoreside waste reception facilities. These regulations just became effective on March 10, 1986, and ports and terminals are generally assuming the burden of taking these wastes, although with reluctance. Their reluctance stems from the great uncertainty about the RCRA and CERCLA burdens which they may be assuming by taking shipboard wastes. For example, a terminal may take a ship's waste, take samples of the waste and send them to a lab for analysis to check for hazardous constituents, only to find weeks later when the lab results are complete that the wastes they assumed to be nonhazardous had been contaminated with solvents. The ship -- U.S. or foreign flag -- is long gone.

Terminals fear that such uncertainty places them in an untenable position: They may assume the waste is not hazardous and face the consequences implicit in the above example, or they may assume that all waste is hazardous, triggering the full set of permitting, processing and insurance requirements which most terminals are unwilling or unable to assume. Listing obviously removes the doubt, but it is doubtful that environmental benefit follows. Instead, the listing would discourage the current environmentally sound disposition of these retained wastes and frustrate an important environmental objective of the international community which has been sought for several years. Listing used oil is the ultimate disincentive for shoreside facilities to accept these wastes. It is difficult to foresee continued availability of waste reception capacity, particularly because of the large volumes (mostly water) involved and the lack of obvious alternatives to the current workable method of treatment and recycling.

The environmental advantages perceived by EPA of listing used oil are insignificant especially in light of the disruption that is likely to occur in the maritime industry because of this designation. Not only is the marine application of CERCLA and RCRA redundant to existing law, but as will be discussed below, the listing of used oil would not significantly improve on the existing regulation of the shoreside treatment of these marine wastes which is already comprehensive. The consequence of listing will be the elimination of the recycling market, unnecessarily creating a new liquid waste disposal problem of enormous magnitude.[5]

II. EPA REGULATIONS

In its March 10, 1986 notice of data availability and request for comments, 51 Fed. Reg. 8,206, EPA states that concern about the used oil listing and its detrimental effect on the current market for recycling of used oil may be due simply to a "perception problem." The reason the Agency sees this concern as potentially a mere "perception problem" is that even if used oil were not listed as a hazardous waste, but contained hazardous substances at levels exceeding those normally found in petroleum, the used oil would be subject to Superfund liability.

Sonat Marine fully appreciates that used oil containing hazardous substances would be and currently is subject to CERCLA. However, our waste oil has not been found to be hazardous. The concern with universal listing of used

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5/ See Comments Submitted by United States Coast Guard on Proposed Listing of Used Oil and Proposed Standards for the Management of Recycled Oil, February 11, 1986 at 9: "It is estimated that 17 million metric tons (5,100 million gallons) of petroleum products from cargo tanks and between 48,000 and 5.9 million metric tons (between 14.4 and 1,770 million gallons) of oily engine room bilge residue may be subject to regulation which are not now regulated as a hazardous waste."

oil as a hazardous waste is real and not merely alarmist. The following discussion sets forth some of our reasons for concluding that perception problems are not the real issue when analyzing the used oil proposals.

A. RCRA Requirements Adequately Regulate Used Oil from Vessels

RCRA authorizes EPA to regulate the management of "solid waste." "Solid Waste" is defined to include liquified, semi-solid, and contained gaseous waste materials resulting from industrial, commercial, mining and agricultural operations which is disposed of on land. Section 1004(27), 42 U.S.C. § 6903(27). "Hazardous wastes" are a subset of "solid wastes" and are defined as solid wastes which, because of their quantity, concentration, or physical, chemical or infectious characteristics (1) may cause or significantly contribute to an increase in mortality or serious, irreversible illness, or (2) may pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of. Section 1004(5), 42 U.S.C. § 6903 (5). These wastes are regulated under Subtitle C of RCRA while nonhazardous wastes are regulated under Subtitle D. A solid waste is hazardous if (1) it is listed by EPA in the regulations as a hazardous waste; (2) it exhibits one of the four characteristics of hazardous waste (i.e., ignitability, reactivity, corrosivity, or EP toxicity); or (3) it is a mixture of a listed hazardous waste and any other solid waste. 40 C.F.R. § 261.3.

1. Current Industrial Used Oil Regulations

In 1980, the Used Oil Recycling Act ("UORA"), Pub. L. No. 96-463, 94 Stat. 2055, amended RCRA. By this Act, Congress directed EPA to evaluate what types of regulatory controls should apply to the reuse and recycling of used oil. "Used oil" was defined as any oil which has been refined from crude oil, used, and as a result of such use, contaminated by physical or chemical impurities. Section 1004(36), 42 U.S.C. § 6903(36). "Recycled oil" was defined as any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). It includes oil which is re-refined, reclaimed, burned, or reprocessed. Section 1004(37), 42 U.S.C. § 6903(37).

The Act included a provision directing EPA to determine whether used oil should be subject to Subtitle C of RCRA since "a determination of the applicability of Subtitle C requirements to disposal of used oil is necessary." H.R. Rep. No. 1415, 96th Cong., 2d Sess., reprinted in 1980 U.S. Code Cong. & Ad. News 4354, 4357. In making such a determination, Congress instructed EPA to ensure that the recovery and reuse of used oil is not discouraged. Id. at 4361.

In 1984, RCRA was amended to supplement the used oil provision (§ 3014) added by the UORA. 42 U.S.C. § 6935. The

1984 amendments require EPA to determine whether certain types of used oil should be identified or listed as a hazardous waste and to develop management standards for all used oil so identified or listed. EPA's authority under section 3014 to regulate all used oil that is not listed or identified as a hazardous waste was retained. In addition, the section providing that regulations adopted under section 3014 should not discourage the recycling of used oil was retained but the intent was clarified to assure that recycling is consistent with protection of human health and the environment. As noted in the Conference Report accompanying H.R. 2867, the Hazardous and Solid Waste Amendments of 1984, Congress' paramount interest in mandating regulation of used oil was to assure protection of human health and the environment, but where this can be assured, EPA was directed to "make every effort not to discourage recycling of used oil. For example, if there are several alternative controls that would be environmentally acceptable, the Agency should allow those which would be least likely to discourage used oil recycling." H. Conf. Rep. No. 1133, 98th Cong., 2d Sess. 114, reprinted in 1984 U.S. Code Cong. & Ad. News 5649, 5685.

Absent the listing of used oil as a hazardous waste under section 3001 of RCRA, 42 U.S.C. § 6921, and the proposed recycling and management standards for used oil so listed, generators, transporters and treaters of used oil exhibiting hazardous characteristics are subject to the full panoply of

RCRA hazardous waste regulations promulgated pursuant to Subtitle C, including the requirements for notification, manifesting, reporting and permits from the point when the wastes are first generated. Waste haulers and processors of used oil are, in fact, presently required to evaluate their wastes according to tests specified by EPA to determine whether the waste meets one of the four defined characteristics of hazardousness and thus must be treated as a hazardous waste. 40 C.F.R. § 262.11.

However, used oil not exhibiting hazardous characteristics is not currently regulated, except as solid waste. For example, sludges or sediments resulting from the bulk carriage of crude oil or refined petroleum products, such as gasoline, are solid wastes under 40 C.F.R. § 261.2. These sludges and residues are periodically removed through tank washings and cleanings. Furthermore, used oil is already subject to special EPA rules that have emerged in stages. The Phase I rules, limiting the burning and blending of used oil, were promulgated in final form on November 29, 1985. 50 Fed. Reg. 49,164.

2. Current RCRA Regulation of Wastes from Ships and Barges

The application of these RCRA hazardous waste regulations to ships and barges is clear and comprehensive. The regulation of vessel wastes was clarified in the October 30, 1980 interim final amendment to the hazardous waste rules, 45 Fed. Reg. 72,024. This amendment provided that hazardous waste generated in a product or raw material storage tank, transport vehicle or vessel is not subject to regulation under 40 C.F.R. Parts 262 through 265, Parts 122 through 124, or the requirements of RCRA section 3010, 42 U.S.C. § 6930, until it is removed from the unit in which it is generated. This exclusion is still provided for in the regulations identifying hazardous wastes. 40 C.F.R. § 361.4(c). The 1980 regulation also amended 40 C.F.R. § 260.10 to modify the definition of "generator" so that it clearly covers persons who remove hazardous wastes from product or raw material vessels.

In the preamble to the 1980 final rule amendment, EPA recognized that, because of their design and operation, vessels are capable of holding, and are operated to hold, the hazardous wastes generated in them until the wastes are purposefully removed. 45 Fed. Reg. 72,025. Thus, EPA concluded that the wastes are contained against release into the environment and the risks they pose to human health or the environment are very low. Based on this conclusion, EPA believed it was not necessary to subject owners or operators of vessels to regulation. Id.

EPA also discussed the question of who is the generator of hazardous wastes that are generated in vessels. The definition of generator, as provided by section 260.10 could be the owner or operator of a vessel, the owner of the product or raw material being stored or transported, or the person removing sludges and residues from a vessel because it is his act of removal which causes the waste to become subject to regulation. The EPA concluded that all three parties should be jointly and severally liable as generators. EPA went on to note, though, that it would be satisfied if one of the three parties assumes and performs the duties of generator on behalf of all the parties. 45 Fed. Reg. 72,026. This is a workable and sensible policy, and there is no valid enforcement reason for changing it. As discussed below, EPA has apparently discarded the logic supporting this policy by inexplicably classifying vessels as the only possible generators of record of engine-related wastes.

B. Proposal to List Used Oil as a Hazardous Waste

On November 29, 1985, EPA proposed to amend the hazardous waste management regulations under Subtitle C of RCRA by listing all used oil as a hazardous waste. 50 Fed. Reg. 49,258. This proposal will subject generators to provisions of both RCRA and CERCLA. EPA determined that used oil "typically and frequently contains significant quantities of lead and other metals, chlorinated solvents, toluene and napthalene which would pose a substantial hazard to human health and the environment, if improperly managed." 50 Fed. Reg. 49,258. At the same time, EPA proposed a hazardous waste management system for recycled used oil that sets standards for generators and transporters of used oil and for owners and operators of used oil recycling facilities. 50 Fed. Reg. 49,212. The proposed recycling rules would only apply to used oil covered by the proposed hazardous waste listing.

As noted in our comments filed February 11, 1986 on the November 29, 1985 proposals, Sonat Marine objects to the inclusion of used diesel engine crankcase and lubricating oil from marine vessels in the definition of used oil and its proposed listing as a hazardous waste. We fail to understand how universal listing of used oil as a hazardous waste (and all the substantial negative impacts resulting from that listing) can materially improve present management and regulatory standards. We believe the listing proposal represents an unnecessary regulatory overkill, offers no benefits, and upsets the balance between protection of the environment and human health and encouragement of resource recovery that Congress intended.

Sonat Marine also objects to the proposed policy change whereby engine-related hazardous waste generated in a vessel is regulated from the moment it is produced and that only the vessel owner or operator can be the generator of record for such waste. Since the proposal for listing used oil as a hazardous waste was issued on November 29, 1985, EPA has taken the position that engine-related wastes are treated differently than the cargo wastes discussed in the October 30, 1980 interim rule. EPA now states that engine-related wastes are regulated from the moment they are produced and that only the vessel's owner and/or operator are generators of such waste.[6] This illogical ruling presumes that owners/operators of vessels cannot contract with waste removers to assume generator responsibilities for engine-related wastes, as they could with cargo-related wastes.

This is a significant and unnecessary departure from the logic supporting the conclusions reached in the October 1980 rule that since a vessel is essentially a self-contained unit and is operated to hold the waste generated in it, the waste should be regulated only when it is purposefully removed from the vessel. As EPA then recognized, "it is only after removal of hazardous wastes from these units that the wastes have the potential for releasing hazardous constituents into the environment and posing a substantial hazard to human health or the environment." 45 Fed. Reg. 72,025. Since the wastes, whether from cargo spaces or engine spaces, come from the same vessels and are subject to the same restrictions on overboard disposal, there is no purpose to be served by differentiating between the two waste streams as long as the liabilities and responsibilities under RCRA and CERCLA remain unchanged.

It appears that Ms. Williams has not adequately projected the impact of this policy change on marine vessels because, not only is there a problem in the ability on the part

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6/ See Letter from Marcia Williams to Vice [sic] Admiral Peter J. Rotz [sic] (February 5, 1986) (copy attached as Exhibit B).

of the vessel owner to contract our generator functions, but, as will be discussed below, vessels will become subject to RCRA treatment facility requirements due to the presence of oily-water separators onboard the vessels or due to the fact that many vessels stay at sea for more than 90 days. We believe from an environmental management and enforcement standpoint it is preferable to have contractors handle the duties of a generator. They are far better equipped to handle testing, identification, recordkeeping, and proper disposal and treatment than a vessel's crew, which has limited resources.

1. Gross Inadequacy of Sampling Base

As noted above, the primary basis for listing used oil as a hazardous waste is that it contains certain toxic constituents listed in Appendix VIII of the 40 C.F.R. Part 261 regulations in concentrations above those necessary to cause substantial harm. EPA apparently surveyed approximately 1,000 used oil samples. It appears that only five of the 1,000 or so samples analyzed were used diesel oils,[7] yet virtually all propulsion units and auxiliary units in our industry are diesel-powered. This survey was conducted by Franklin Associates and the results published in a study entitled

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[7] Even these appear to have been contaminated with substances unrelated to use in diesel engines, suggesting the hazardous constituents were added after removal from the engine. See infra at 25.

Composition and Management of Used Oil Generated in the United States ("Franklin Associates Report").

Sonat Marine submits that the evidence upon which EPA based its decision to list virtually all used oil as a hazardous waste does not support EPA's sweeping contention that used oil contaminated through use contains toxic constituents and poses risks to human health or the environment. EPA is proposing to regulate all used oil as a hazardous waste based on the assumption that some used oil is contaminated either through use or through subsequent collection and consolidation. As pointed out in comments submitted by the Independent Lubricant Manufacturers Association ("ILMA") on February 11, 1986, the Franklin Associates Report is seriously flawed in that, among other reasons, the methodology used to collect the used oil samples is not provided and the sources have not been adequately determined. Sonat Marine concurs in and supports these criticisms.

Specifically, the ILMA reviewed the Franklin Associates Report and found that only 40 percent of the analyzed oil samples originated in either the "automotive" or "industrial" sector. The sources of the other 60 percent of the samples were not identified. Also, the ILMA found that few of the identifiable samples were actually taken from generators; most were taken from storage tanks at collection sites where many sources of used oil and other flammable substances may have been mixed together. As the ILMA notes, used oil samples drawn from generators, collectors and processors cannot be statistically compared because samples drawn at one level of the survey do not provide statistically significant information about the other levels.

Thus, there has been no meaningful analysis conducted upon which EPA can conclude that all used oil is hazardous and should be universally listed as such. In fact, in the preamble to its proposed used oil recycling rules, EPA stated that its studies (citing the Franklin Associates Report) have documented that used oil is adulterated after leaving generators' sites. 50 Fed. Reg. 49,217. ("Samples taken from processors are much more contaminated with solvents than samples taken directly from generators.")

Furthermore, Sonat Marine understands that the Caterpillar Tractor Company extensively tested samples of used diesel crankcase oil and none of the samples contained significant amounts of toxic constituents which would support listing used diesel crankcase oil as a hazardous waste. And the Coast Guard compiled sample analyses which indicate that the concentration of metals in diesel engine oil is significantly lower than the threshold levels set by RCRA.[8] This evidence comports with our sampling analysis which is attached as Exhibit A.

8/ See U.S. Coast Guard, Comments on the Proposed Listing of Used Oil as a Hazardous Waste and Proposed Standards for the Management of Recycled Oil, submitted February 11, 1986.

2. Improper Shift in Burden of Proof

The concern with universal listing of used oil is real. By listing all used oil as a hazardous waste without any adequate scientific basis or factual support, EPA improperly shifts the burden of proof onto generators of used oil to show that a specific type of used oil is not hazardous, either by petitioning to delist a specific type of oil from a particular generating facility, or, in the case of a spill for which a CERCLA or CWA cleanup is instituted, that specific tests were conducted on the particular oil and show it not to be hazardous.

a. Petition for Delisting

Any person may demonstrate that a specific waste from a particular generating facility should be "delisted" on the basis that the waste is fundamentally different from wastes being regulated and does not exhibit any hazardous characteristics. 40 C.F.R. § 260.22. The evidence needed to delist a waste must be on a site-specific basis. Therefore, an owner of a fleet of marine vessels, like Sonat Marine, in petitioning to delist used oil, would seem to be required to test used oil samples from each waste stream taken from each of its vessels and to submit a petition for each vessel owned. These tests are very expensive and would entail an enormous amount of time.

Moreover, EPA has not specified the criteria for delisting used oil. No concentration limits on hazardous constituents have been proposed which would allow a person to determine whether his used oil can be delisted as a hazardous waste. Thus, EPA had posed an unreasonable and unnecessary burden on petitioners to satisfy the delisting criteria for all hazardous wastes for each marine vessel. The justification for not specifying delisting criteria is that the approach would pose "several practical problems . . . and problems relating to implementation." 50 Fed. Reg. 49,265.

Given the fact that EPA has not adequately satisfied its statutory mandate, pursuant to the UORA and the 1984 RCRA amendments, to determine which types of used oil are hazardous by simply listing virtually all used oil as hazardous, the Agency will be utterly flooded with delisting requests by generators whose used oil is not and never has been hazardous but who must nonetheless bear the burden of proving the absence of hazardousness and environmental threat.

b. CERCLA Liability

When a waste is released into the environment, either on land or water, if the substance is not listed as a hazardous waste under Subtitle C, but nevertheless causes environmental harm, it is the burden of the federal government or the states to prove the waste is hazardous before a generator, transporter or disposer of that waste may be held jointly and severally liable under section 107 of CERCLA, 42 U.S.C. § 9607, or section 311 of the Clean Water Act, 33 U.S.C. § 1321. However, if the substance so released is listed as a hazardous waste, a responsible party is held to virtual strict liability because defenses to CERCLA and Clean Water Act liability are extremely limited.

Therefore, it is incomprehensible to Sonat Marine how EPA could classify concern about the listing of used oil as a hazardous waste as merely a "perception problem." The impact is direct; operations which have been regulated under authorities relating to oil and petroleum products would now be regulated under CERCLA and RCRA. A change in designation has profound permitting, operational and insurance consequences. This is hardly a perception problem. It is a real and concrete problem with serious adverse consequences.

3. De Minimus Mixture Test is Unworkable

Under the current mixture rules, 40 C.F.R. § 261.3, when a hazardous waste is mixed with a non-hazardous substance, the entire mixture becomes a hazardous waste, with certain exceptions. Therefore, once used oil is listed as a hazardous waste, any mixture of used oil and another non-hazardous solid waste will be classified as a hazardous waste subject to all applicable requirements under Parts 262-265 when it is disposed. In its November 29, 1985 notice, EPA proposed an amendment to the mixture rule of 40 C.F.R. § 261.3 to the effect that otherwise non-hazardous wastewaters contaminated with very small amounts of used oil should not be regulated as hazardous wastes because such wastewater poses no significant hazard when stored, transported, treated, disposed, or reused. Therefore, EPA proposed a different approach for removing mixtures containing only small amounts of used oil from regulatory control by providing that a mixture of non-hazardous wastewater and used oil caused by a de minimus loss of lubricating oil, hydraulic or metalworking fluids, etc., due to spills or drippings will not be subject to regulation as a used oil. However, EPA did not propose a specific concentration limit for such used oil or a quantity limit except to state that the exemption would apply only to "very small amounts." 50 Fed. Reg. 49,263.

Vessel owners or operators have no idea at this point whether their wastewaters are subject to regulation or not since the de minimus amount allowed under EPA's mixture rule amendment has not been defined. Most vessel machinery drips used oil into the bilges where it mixes with water. The percentage of water to oil is generally quite high. For all practical purposes, this de minimus test is completely unworkable because, without a clear definition of "de minimus amounts," vessel operators have no way of determining whether their operations are subject to regulation. EPA states that the de minimus amount would be an amount lost "in normal operations", but the maritime industry cannot rely on such generalities when liability under CERCLA and RCRA for spills or noncompliance is at stake. It should be noted that existing Coast Guard regulations prohibit the intentional draining of any oil into the bilges. 33 C.F.R. § 155.770. Therefore, only small amounts of lube oil normally drip into the bilges. However, it is the unforeseeable circumstances, such as random gasket leaks, which concern vessels owners where no definition of de minimus amounts is given. The de minimus amount must be clearly defined and industry given the chance to comment on the amount as so defined.

When EPA proposed the de minimus mixture exemption, it placed two conditions on this exemption: (1) that a mixture of wastewater containing used oil and another hazardous waste will still be considered a hazardous waste; and (2) that used oil recovered from oily wastewaters is considered recycled oil and is therefore subject to the proposed recycling rules, except that if such recovered oil is disposed it will be subject to the general hazardous waste rules rather than the special recycled oil rules. 50 Fed. Reg. 49,264. As a result of the second condition, a person putting oily wastewater (otherwise exempt under EPA's proposed amendment to the mixture rule) through an oily-water separator -- equipment many vessels are required by MARPOL and U.S. law to have on board -- would be a "generator" under the used oil proposals and would be subject to the proposed used oil recycling regulations. 50 Fed. Reg. 49,219. This person would also be classified as a treater of used oil and would be required to obtain a TSD facility permit for each vessel and comply with all applicable TSDF requirements.[9]

4. Recycling Exemption is Unsatisfactory

In its March 10, 1986 notice, EPA requested comments on whether used oil recycled pursuant to the proposed recycling and management standards should be exempt from listing as a hazardous waste. 51 Fed. Reg. 8,206-07. At first glance, this approach would appear to satisfy the concerns of those who see the detrimental effect which listing of used oil as a hazardous waste would have on the recycling market. However, there are potential problems with this approach which must be addressed.

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[9] The current policy position of EPA on mobile treatment facilities was spelled out in a memorandum entitled *RCRA Permits for Mobile Treatment Units and Multiple Sites Using the Same Type of Equipment* (November 2, 1982) which provided the following guidance to Regional offices:

> As you know, a RCRA permit is required for each site at which hazardous waste treatment, storage or disposal facilities (TSDFs) operate. If *the* TSDF is mobile or if the same type of equipment (*e.g.*, a tank of identical design) is used at more than one site to handle a similar or identical waste, a RCRA permit is still required at each location.

Two years later, however, Congress stated explicitly in the Conference Report for the 1984 RCRA Amendments that EPA need not require under RCRA section 3005 that "individual permits [be issued] for each site that will be visited" by a mobile treatment unit. H. Conf. Rep. No. 1133, *supra*, at 95. Congress intended that EPA issue "a unit specific permit" for mobile units which can then be operated at "the type of site and general location" authorized by the permit. *Id*.

EPA has not acted on this issue, however, and mobile treatment facilities, such as vessels with oily-water separators, would be required to obtain a permit for each site where treatment takes place still exists -- a manifestly absurd result considering the fact that vessels operate throughout navigable waters. *See* *Petition for Rulemaking By the Hazardous Waste Treatment Council For Adoption By EPA of Regulations Allowing Expeditious Permitting of Portable Hazardous Waste Treatment Units Under the Resource Conservation and Recovery Act*, January 15, 1986.

First, generators may be unable to completely track the used oil removed from a marine vessel because of the number of subsequent steps in the processing of the waste once it is removed from the vessel. Under the proposed recycling regulations, a generator may contract to have the used oil collected and recycled at a permitted facility and comply with special recordkeeping requirements (or else initiate a hazardous waste manifest that begins the cradle-to-grave tracking system), 50 Fed. Reg. 49,231; however, the generator has no control ovek the used oil once it leaves the vessel. If this oil is subsequently disposed of instead of recycled, the used oil becomes a listed hazardous waste and the generator would be retroactively liable under both RCRA for non-compliance and CERCLA for potential release into the environment. The ultimate destination of the oil may not be certain at the time of removal since recycling is dependent upon fluctuating market conditions.

Second, some types of used oil are not susceptible to complete recycling, and there may be residues from the recycling process which must be disposed. It is not clear whether these disposed residues would be considered a hazardous waste (subject to full RCRA hazardous waste regulations) or not, nor whether such used oils, if not completely recycled, would initially be considered a listed waste. The impact of mixing of a ship's waste (which is fully recoverable) with another source's waste (which is contaminated as is a hazardous waste) is also unclear.

These deficiencies undermine whatever favorable benefits would result from EPA's proposed approach in the March 10 notice. Sonat Marine believes the recycling standards can be implemented without listing used oil as a hazardous waste and this would significantly reduce the concern on the part of the marine industry and protect human health and the environment as well.

C. EPA's Regulatory Objective is Flawed

Aside from the specific flaws of the listing proposal and the recycling exemption, there is a fundamental failure on EPA's part to recognize the counterproductive (economic and environmental) effects of listing used oil. The economy of this country runs on fossil fuels; therefore, this nation must have a viable recycling market for our waste oils to be effectively managed and recovered. Optimal environmental management of used oil is through recycling. Recycling is only viable if the recycled product is a less expensive substitute for virgin product. Without the marginal price advantage, the chain of service businesses which take and process our oily wastes starts to break down; the recycling process then stops, creating millions of gallons of liquid waste with no place to go.

The marginal advantage can evaporate with any of the following events: (1) a decline in the price of virgin oil products; (2) an increase in the cost of processing used oil; and (3) regulatory encumbrances which make used oil less attractive than virgin products (which do not have these regulatory costs). All three conditions are currently coinciding. The first condition EPA has no control over, although the Agency must understand the implications of the current downward spiral in virgin oil prices. With respect to the cost of processing and regulatory encumbrances, EPA's listing proposal will, and may have already, caused a shift away from preference for used oil as a substitute fuel. In fact, there has already been a change in recycling economics due to added regulatory costs. While the "product" used to have value and was traded as a valuable commodity, it is now being traded as a waste. Oil generators used to obtain $0.40 per gallon for used oil. They now have to pay to have it removed.

The reasons for this shift in economics is the added costs to processors of regulatory compliance. This includes costs of obtaining permits, maintaining compliance, conducting laboratory analyses, maintaining insurance, hiring additional personnel and making increased capital investment in equipment that meets regulatory standards. The listing rule will add to these regulatory costs with new permitting and insurance requirements and will add risk factors that will accelerate the shrinking economic advantages of used oil. The same can be said for end users of listed reclaimed used oil. Recycling is built on fragile economics. This listing proposal ignores the already substantial regulation of this product and fails to justify the added regulatory burden caused by listing.

More specific information on market impacts will undoubtedly come from those trade groups with more specific knowledge of recycling economics.[10] Just from our own experience we are expecting an initial 200 percent increase in the cost of having our used oil handled, assuming our contractors are able to obtain the necessary permits and mandatory insurance and if they are willing to continue handling the waste.

It is worth further addressing EPA's query about the perception problem of labelling used oil as a hazardous waste. A far less sweeping 1964 Federal Trade Commission regulation requiring re-refined oil (even though it met virgin specifications) to bear the designation "made from previously used oils", had a devastating effect on the market for reprocessed lubricating oils. The Association of Petroleum Re-Refiners has stated that in 1960, prior to the FTC rule, about 150 companies produced more than 300 million gallons of refined oil. By 1980, after the rule had been in effect for several years, fewer than 10 firms produced less than 100 million gallons. "Congressional Quarterly", CQ Weekly Report, Oct. 11, 1980, p. 3110. Congress concluded that this labelling had a detrimental effect on recycling and specifically included a provision in the Used Oil Recycling Act of 1980 prohibiting the FTC from requiring such labelling (Section 4(c), Pub.L. No. 96-463) pending completion of a National Bureau of Standards Study on performance characteristics of re-refined oil.

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[10] See, e.g., Comments of the Independent Lubricant Manufacturers Association, Feb. 11, 1986 at 18.

Actions, such as the FTC proposal or the EPA listing proposal, have a chilling effect on recycling. The results are not consonant with the encouragement of sound waste management and defeat one of the stated Congressional goals of RCRA -- to minimize the generation of hazardous waste and land disposal through the encouragement of process substitution, materials recovery and properly conducted recycling and reuse. Section 1003(a)(6), 42 U.S.C. § 6902(a)(6).[11]

An unintended consequence of listing used oil will be the elimination of a powerful incentive for generators of used oil to keep their used oil from being contaminated with hazardous substances. Because the consequences of having a waste listed as hazardous are so dramatic, companies like ours have taken steps to minimize the use of hazardous substances or the introduction of hazardous wastes into the used oil stream. Our decision to minimize use of solvents and degreasers is an example of this incentive. We believe that listing will defeat the salutary effects of the incentive to avoid unnecessary application of the hazardous waste rules and that the listing proposal would achieve an unnecessary overreaching and overregulation of a product that is currently a marginal candidate for the optimum form of waste reduction -- recycling. The added environmental protection perceived by EPA pales in comparison to the waste problem that will be generated by disruption of the used oil recycling market.

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[11] See also § 3014(a) which admonishes EPA in the exercise of its general regulatory authority not to "discourage the recovery or recycling of used oil, consistent with human health and the environment." 42 U.S.C. § 6935. EPA incorrectly states that the 1984 amendments to RCRA deleted the requirement that the decision on listing be qualified by deference to the recycling markets. 50 Fed. Reg. 49,261 (Nov. 29, 1985). This is misleading since § 3014(a) applies to all regulatory activity pertaining to used oil, including listing.

D. Insurance Problems

The listing of used oil has multiple adverse insurance implications. Those handling the used oil who could be considered owners or operators of treatment, storage and disposal facilities would have mandatory insurance requirements imposed under section 3004(t) of RCRA, 42 U.S.C. § 6924(t).

In addition, all marine vessels measuring over 300 gross tons which have on board used oil (presumably any vessel of 300 tons or more which has an engine) would require evidence of financial responsibility under section 108(a)(1) of CERCLA (in addition to oil spill insurance required by section 311 of CWA). Unlike the section 311 insurance which, in the case of Sonat Marine, is provided through a Protection and Indemnity Club,[12] CERCLA insurance would have to be obtained outside the P&I Club market. Availability of such endorsements is extremely limited, particularly for new risks.

The listing of used oil would also trigger the mandatory $5 million insurance provision for trucks hauling used oil under section 30(b) of the Motor Carrier Act of 1980, 49 U.S.C. § 10927. Such insurance is very difficult to obtain.

Every link in the transportation and used oil management cycle would be subject to mandatory insurance requirements as a consequence of the listing proposal. It will have the most immediate impact since evidence of satisfactory financial responsibility is a condition of doing business for each link of the used oil cycle. It is essential that EPA understands and appreciates the extent of the scarcity of environmental impairment liability (EIL) coverage and the root causes of the lack of capacity to cover this liability in the insurance markets. Without an understanding of this current insurance crisis (an overworked term, nevertheless appropriate

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12/ P&I Clubs are mutual associations formed by shipowners to provide protection from large financial losses to one member by contribution toward that loss by all members. The Clubs are capitalized by the owners who also layer self-insurance, mutual insurance and reinsurance to cover oil pollution and other liability risks.

here), EPA will grossly underestimate the long-term ramifications of its listing proposal.

The scope and causes of this pervasive problem are the subject of a report issued by the Attorney General's Tort Policy Working Group.[13] This report describes some of the changes in tort liability theories (e.g., strict, joint and several liability) and in award levels that have caused insurance carriers to drastically reduce their scope of coverage and to raise rates. The issues discussed in that document are beyond the scope of these comments, but they should be understood in order to place the current EIL capacity crisis in perspective.

While the issues in the Attorney General's report describe the overall causes of diminished insurance capacity, the EIL market, of which a CERCLA risk is a component, has specialized features which make it one of the most difficult of all risks to cover. Underwriters of EIL coverage have been struck by a coincidence of trends in addition to those described in the report that have had and will have profound impacts on the availability of insurance qualifying under CERCLA and RCRA.

The first problem is that most comprehensive general liability (CGL) insurance policies were written as

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13/ Report of the Tort Policy Working Group on the Causes, Extent and Policy Implications of the Current Crisis in Insurance Availability and Affordability (February 1986).

occurrence-based policies. Early versions of these policies did not exclude many of today's environmental risks. In other words, an insurer's duty to insure extends indefinitely to cover all claims made for damage arising out of an event that "occurred" during the period of insurance. Hence, many of the policies of CERCLA defendants were issued in the 1960s and 1970s when the disposal (often lawful at the time) of hazardous substances took place. The claims for damages filed today arise under CERCLA, a risk that was unknown at the time of policy issuance. Thus, the insurance industry faces current claims and losses for previously issued policies, for risks and damages that were not known at policy issuances, for premiums that bore no relationship to the level and scope of current CERCLA awards of damages.

Second, even though more recently issued CGL policies have sought to exclude certain insurance risks, namely, damage caused by seepage (non-sudden events), generally thought at the time to exclude the types of ground water contamination commonly being alleged in CERCLA cases, several courts have construed CGL policies, even those with explicit exclusions for non-sudden events, to cover CERCLA actions involving hazardous substances leaking into the ground and into groundwater. Decisions such as the Jackson Township case,[14] and the

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[14] Jackson Township Municipal Utilities Authority v. Hartford Accident & Indemnity Co., 186 N.J.Super. 156, 451 A.2d 990 (1982).

Peerless case,[15] have not only eroded the insurance industry's exclusionary policy provisions, but they have in many cases led to a substantial broadening of an already difficult-to-quantify and unanticipated risk.

Third, conduct giving rise to claims under these policies is being measured against a legal standard that upsets the basic risk predictions that underlie the design and pricing of insurance coverage. This is caused by those provisions of CERCLA which provide retroactive, nearly absolute, joint and several liability. The coincidence of these events has led to an insurance loss reserve problem of such magnitude that insurance carriers are reluctant to write insurance prospectively.

The magnitude of the disincentive for insurance carriers to ever write this line again is easily understood by examining some of the recent loss experiences in the property casualty field, of which EIL coverage is just one component. Richard Hazell, a member of the Council of Lloyd's of London, testified to the Senate Committee on Commerce, Science and Transportation on March 4, 1986 that their worldwide general liability account, the vast majority of which came from U.S. business, consisted of premium income of £346 million, investment income of £142 million, and claims and expenses of

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15/ Waste Management of Carolinas, Inc. v. Peerless Insurance Co., 72 N.C. App. 80, 323 S.E.2d 726 (1984), review granted, 313 N.C. 612, 330 S.E.2d 616 (1985).

£802 million, producing a net loss of £314 million. According to Mr. Hazell, this one class of insurance business generated only 12 percent of Lloyd's total premium income, yet it was responsible for nearly 100 percent of their losses.

The harsh liability scheme, the unpredictable losses, the inability to rationally structure insurance premiums and the enormous long-tail liability are profound forces which are likely to prevent a restoration of the EIL market for the foreseeable future. Accordingly, EPA should not take lightly the concern being expressed about the lack of insurance, particularly when it is a condition of handling used oil.

While our company has not directly experienced the problems associated with mandatory insurance under CERCLA and RCRA (we presently do not handle any RCRA hazardous substances) we have discussed the insurance situation with some of our contractors upon whom we will have to rely for handling our oil waste streams. One current contractor states that his general liability coverage for his tank cleaning operation was reduced from $1 million to $500,000. At the same time, his annual premium was increased from $12,000 to $48,000. Were his coverage to include hazardous substances, which it would have to if used oil were to become a listed hazardous waste, it is questionable if he could obtain insurance at all.

As long as the conditions giving rise to retroactive liability under CERCLA persist and as long as the liability scheme under CERCLA exists as it is written today, this insurance crisis for this market is likely to remain permanent. Therefore, proposals such as the listing of used oil which have the effect of expanding insurance requirements for those that handle used oil and to require mandatory coverage of hazardous substances are going to accomplish no benefit. Insurance simply does not exist and, as it is a condition of doing business, transporters, terminal operators and facility owners will have no choice but to stop handling this product. Given the almost certain disruption of industry and recycling that is likely to follow the listing of used oil as a hazardous waste and given the adequacy of existing regulation of used oil both shoreside and at sea, the only sensible recourse is for EPA not to list this valuable resource as a hazardous substance.

III. CONCLUSION

The absence of a factual basis for expanding the universe of hazardous wastes to include used oil flaws this entire rulemaking project. Moreover, casual acceptance of the consequences of listing used oil without regard for the profound environmental and commercial impacts on recycling makes the regulatory analysis accompanying the proposal deficient. Accordingly, we urge the Agency to reexamine its proposal and issue a supplemental proposal that lists only those used oil classes which actually exhibit the hazardous characteristics and excludes from listing those classes, such as used marine oil, which do not.

Three Parkway
Philadelphia PA 19102 1364
215 864 1200
Telex 834 539

Exhibit A

SONAT MARINE

April 2, 1986

Ana Laboratories Inc.
111 Harding Avenue
Bellmar, New Jersey 08031

Attn: M. Sadic Alie

Dear Sadic:

The U.S. Environmental Protection Agency has published a proposed rulemaking declaring waste oil from vessels as hazardous waste.

As you know, the waste oil from our tugs is composed mainly of lube oil with some fuel oil dilution. The EPA has published the following allowable limits for waste oil to be delisted as hazardous waste:

Arsenic 5PPM
Cadmium 2PPM
Chromium 10PPM
Lead 100PPM
Total Halogens 4000PPM
Flashpoint 100°F min.

I have reviewed the lab analysis reports from your company on our vessels. I have not noted any of these analyses that exceed the above limits.

We would appreciate your confirmation that our vessel samples are within these limits.

Further, we would appreciate your comments as to other waste oils you test for your maritime customers.

Additionally, we would appreciate your advice on the probability of the above listed contaminates being found in engine room waste oils from vessels.

We intend to use this requested information as support to Sonat Marine's comments on the subject EPA proposed rulemaking.

Your prompt attention to this matter will be appreciated as our comments are due on April 9th.

Sincerely,

John R. L. Hihn
Asst. Vice President
Operations

WHERE AN OIL COOLS & LUBRICATES - WE PLAY A VITAL ROLE IN MAINTENANCE, MANAGEMENT & FINANCIAL DECISION

ANA

ANA-LABORATORIES, INC.

SONAT MARINE INC. 4/4/86
THREE PARKWAY
PHILADELPHIA, PA 19102-1364

ATT: MR. JOHN R.L.HIHN, V.P.OPR.

RE: YOUR LETTER DATED APRIL 2, 1986 REGARDING, E.P.A RULEMAKING OF WASTE OIL FROM MARINE VESSELS AS HAZARDOUS WASTE FOR THE FOLLOWING;

A.	ARSENIC	5PPM LIMIT
B.	CADMIUM	2PPM "
C.	CHROMIUM	10PPM "
D.	LEAD	100PPM "
F.	TOTAL HALOGENS	4000PPM "
F.	FLASH POINT	100F MIN."

DEAR MR. HIHN,

THE FOLLOWING COMMENTS ARE MADE TO VARIFY YOUR QUESTIONS.

A. NO ARSENIC IS REPORTED BY "ASLE" IN MARINE CARANKCASE LUBE OILS. NO ARSENIC IS REPORTED BY "SAE" IN MARINE POWER TRAIN COMPONENTS. THIS BEING TRUE, NO ARSENIC IS TESTED IN OUR ANALYSES.
B. CADMIUM MAY BE PRESENT IN LUBE OIL AS WEAR. THE REVIEW OF ALL THE ANALYSES PERFORMED WILL INDICATE THAT THE ABOVE SET LIMIT IS MET.
C. CHROMIUM MAY BE PRESENT IN LUBE OIL AS WEAR.THE REVIEW OF ALL THE ANALYSES PERFORMED WILL INDICATE THAT THE ABOVE LIMIT IS MET.
D. LEAD MAY BE PRESENT IN LUBES AS A WEAR METAL, &/OR GASKET SEALER, &/OR, AS EP ADDITIVES IN GEAR LUBES.
- YOU WILL FIND LEAD WITHIN ABOVE LIMIT IN YOUR WASTE LUBE.
E. A HALOGINATED LUBE IS NOT REPORTED TO BE IN MARINE LUBRICANTS. NO TESTING IS DONE FOR HALOGENS.
F. ALL YOUR LUBES AND DIESEL FUELS FLASH ABOVE 100F.

ANA-LABS SPECIALIZES IN PREVENTIVE MAINTENENCE TESTING AND AS A SECONDRY SERVICE TO ITS CUSTOMERS, A WASTE OIL TESTING MAY BE PERFORMED.

AS A CURIACITY WOULD YOU PLEASE ASK EPA THAT;
HOW CAN YOU FIND SOMETHING IN A WASTE LUBE OIL IF IT IS NOT ADDED IN BEFORE ITS USE IN AN UNUSED LUBE OIL.
IT MAY BE MORE LOGICAL TO CHECK FOR THESE CONTAMINANTS AT IT'S ROOT, THE STARTING MATERIAL SUPPLIES OF OILS,ETC.

RESPECTFULLY YOURS

SADIQ (JOHN FIELD) ALI
PRODUCT/PERFORMANCE EVALUATOR
ff:dsk0:iot1.txt[30,1]

LAB 111 Harding Avenue Bellmawr, N.J. 08031 (609) 931-0011 (800) 257-7898

Exhibit B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OSWER POLICY DIRECTIVE NO.
9451.00-1A

FEB. 5 1986

Vice Admiral Peter J. Rotz
Chief, Office of Marine Environment
and Systems
United States Coast Guard
2100 2nd St., S.W.
Washington, D.C. 20593

Dear Vice Admiral Rotz:

We have been asked by members of your staff to clarify the applicability of EPA's regulations under the Resource Conservation and Recovery Act (RCRA) to operational wastes from ships. The Coast Guard's Reception Facility Requirements for Waste Materials Retained On Board, issued under Annex I of MARPOL 73/78 (50 FR 36768, September 9, 1985), have raised a number of questions regarding the status of ships and terminals/ports under the RCRA regulations. In particular, we have been asked to determine who is the generator of oily waste that is produced on ships and required under the Coast Guard's September 9, 1985 regulations to be discharged to reception facilities at ports and terminals.

We have determined that, as a general matter, for any oily waste that is produced in product or raw material vessel units, such as those used for bulk shipment of oil, both the ship and, in some circumstances, the operator of the central facility involved in removing the waste from the ship would be considered hazardous waste generators. For other types of oily waste, such as bilge water in vessel engine rooms contaminated with engine lubricant drippings or solvents, only the ship would be deemed to be the hazardous waste generator.

1. Generator requirements

The RCRA regulations define a generator as any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation. 40 CFR §260.10. Any person who generates a solid waste must determine if that waste is hazardous, and if so, must receive an EPA identification (ID) number before treating, storing, transporting or disposing of the waste. If the generator plans to move the waste off-site for treatment, storage or disposal, he must comply with certain requirements in Part 262, including preparing an EPA manifest, marking the waste, keeping records and filing reports. In addition, a generator may accumulate hazardous waste on-site for up to 90 days without a permit if he complies with the requirements of §262.34(a)(1-4).

2. Types of waste subject to regulation

The oily wastes subject to Coast Guard regulation under MARPOL Annex I generally are produced in two ways. The first is through bulk shipment of oil, whereby sludges and sediments that settle out in the oil storage tank or unit must be periodically removed. Oil tankers also need to periodically dispose of oily ballast water and tank cleaning water. The second type of waste is produced from the use of oil as a fuel and lubricant in a ship's propulsion and auxiliary system. Bilge water that accumulates in engine rooms often contains high concentrations of oil from lubricant drippings and other routine losses. The bilge water may also be contaminated with other types of wastes. Both types of waste are solid wastes under §261.2.

Whether these wastes are hazardous wastes would be determined under §261.3. In general, the waste would have to be either (1) listed in Subpart D of Part 261; (2) identified in Subpart C of Part 261 (*e.g.*, exhibits ignitability characteristic); (3) a mixture of solid waste and a listed hazardous waste; or (4) is derived from treating a listed hazardous waste. Under current EPA regulations, used oil is not listed as a hazardous waste,*/ and therefore, would have to meet (2), (3) or (4) above. We do not anticipate many situations in which one of these criteria would be met, with the possible exception of contamination of bilge water with spent solvents. (§261.31) However, even this possibility can be minimized if the bilge waters are segregatd from other wastes generated on the ship.**/

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*/ EPA's recent proposal to list used oil as a hazardous waste, if finalized, will change its current status under the RCRA regulations. See 50 *Fed. Reg.* 49212 (November 29, 1985).

**/ Under EPA's spent solvent listing, since a solvent is considered "spent" when it has been used and is no longer fit for use without being reclaimed or reprocessed, it is likely that solvents dripping from machinery and collecting in bilge water would not cause the wastewater to be hazardous. See 50 *Fed. Reg.* 53315, 53316 (December 31, 1985).

3. Regulation of oily waste under RCRA

The two types of oily waste from ships - - waste produced in product transport units and waste produced in the propulsion and auxiliary systems - - are treated differently under the RCRA regulations. Under §261.4(c), a hazardous waste generated in a product or raw material transport vessel is exempt from regulation until it exits the unit in which it was generated or unless it remains in the unit more than 90 days after the unit ceases to be operated for storage or transportation of the product or raw materials. These wastes are sludges and residues produced in tanks or holds that carry products or raw materials, where the products or raw materials are not in themselves hazardous wastes. See 45 Fed. Reg. 72024, 72026-27 (October 30, 1980).

As a result of this exemption, parties who remove the waste from the ship at a central facility by either emptying the product-holding unit or cleaning the holding tank are deemed to be generators under 40 CFR §260.10 because their actions cause the hazardous waste to become subject to regulation. In addition, the actions of both the operator and owner of the vessel and the owner of the product or raw material result in production of the hazardous waste. Thus, these parties, and any others that fit the generator definition, are jointly and severally liable as generators. See Id. at 72026.

The Agency looks primarily to the central facility operated to remove sediments and residues to perform the generator duties, since it is the party best able to perform such generator duties as determining whether the waste is hazardous. Where the wastes are not removed at a central facility, however, the Agency looks to the operator of the vessel to perform the generator duties. Id. at 72027.

Engine-related wastes are treated quite differently in that they are regulated from the moment they are produced. Since the operation of the ship's propulsion system produces the oily wastes, the ship's owner and/or operator are generators. The facility involved in removing this waste from the ship is not a generator because it is not causing the waste to become subject to regulation - - this waste is already subject to regulation when produced in the ship. The facility may be a transporter (Part 263) or a treatment storage or disposal (TSD) facility (Parts 264-265), depending upon the actions it takes.

The Coast Guard's requirement that certain ports and terminals be certified to have available adequate reception facilities for ships' oily wastes does not necessarily determine the role of the port or terminal in the RCRA regulatory scheme.*/ For example, a port or terminal that has available an independent waste hauler who transfers engine room waste directly into a tank truck does not appear to fit the definition of generator, transporter or TSD facility. The waste hauler, or whoever is engaged in the offsite (i.e., off the ship) transportation of the waste, would be deemed the transporter.

Of course, if the manifested waste is stored for any period of time in tanks or containers at the port or terminal, or if the waste is removed to and stored in a barge, both the port and barge storing the waste would be deemed TSD facilities subject to the requirements of Parts 270, 264 and 265. If whoever is transporting the manifested waste from the ship stores the waste in containers meeting the requirements of §262.30 at a transfer facility, such as a loading dock, the waste may be stored for 10 days without being subject to regulation under Parts 270, 264 and 265. See 40 CFR §263.12.

The ship, as the generator, is also a TSD facility to the extent that it is storing hazardous waste on board. Under §262.34, a generator may accumulate hazardous waste on site for 90 days or less without having a permit provided certain requirements are met. EPA is currently finalizing a proposed regulation that would extend this accumulation period for generators who generate between 100 - 1000 kilograms of hazardous waste per month. See 50 Fed. Reg. 31278 (August 1, 1985).

The Agency believes that the application of the RCRA regulations in this way will be workable for the ships and reception facilities subject to Coast Guard regulations. In situations where ships' owners or operators are unable to perform the generator duties, ships' agents that are available at ports or terminals to handle fueling and other necessary functions, such as carrying out Customs requirements, may perform these duties on behalf of the ship. The Agency would expect the shipping company or agent handling the required manifesting and record keeping functions to retain records either at its U.S. business headquarters or at the local agent's office located near the port or terminal where the ships have their waste removed.

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*/ Similarly, potential liability of parties under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) is not necessarily determined by RCRA responsibilities. For example, under CERCLA §107, persons who arrange for transportation, disposal or treatment of hazardous substances are liable for certain costs, so that parties who are not "generators" under RCRA may nonetheless have certain CERCLA liabilities.

Also, any parties liable for performing generator duties may designate among themselves the person who will actually carry out those functions. For example, where both the ship and a central waste removal facility are deemed to be generators, they may mutually agree that the central facility will perform the generator duties.

We hope that this has been responsive to the Coast Guard's concerns regarding the interaction between the MARPOL and RCRA regulations. Please don't hesitate to contact me or Bruce Weddle of my staff at 382-4746 if you have any further questions.

Sincerely,

Marcia Williams

Marcia Williams
Director
Office of Solid Waste

APPENDIX D.--PREPARED STATEMENT OF JOHN P. O'CONNELL, PRESIDENT, MORECO ENERGY, INC., McCOOK, IL

My name is John O'Connell. I am president of MORECO Energy, Inc., the leading oil re-refining company in the United States. We have been serving a very wide cross section of industry and commerce for over 50 years. Our company takes in used oil and processes it through a state-of-the-art re-refining system and produces from it fuels, high quality lubricants and asphaltic products, with no residue left to plague the future environment. These services are provided to large and small industries, governmental agencies and the public. The companies we serve have continued to use our services for these fifty years for two basic reasons:

1. We have provided short and long term economic benefit to them.
2. They are assured that their oil is handled in a long-term environmentally acceptable manner.

Some of our customers had previously used alternate services in which their oil was disposed of in landfills, used for uncontrolled burning or retained for future disposal. Use of some of these service firms have resulted in their company becoming involved in a Superfund cleanup program. In fact, a large percentage of the Superfund sites in the United States have as one of their major constituents used oil.

We know that everyone in this room will agree that we must put in controls to prevent a recurrence of similar incidents. The only questions are (1) what should these controls encompass, (2) how will they be administered. We know also, that your Committee on Small Business is interested in the effect of the proposed controls on this segment of our economy, as well as on your constituents. We feel that if legislation such as the EPA has proposed in the November 29, 1985 Federal Register is enacted that all of the small businesses in the United States will be placed on equal footings. Companies that use oil recycling services which operate in an environmentally acceptable manner will not have to compete with other companies who dispose of their oil through unacceptable long-term environmental means. Companies who operate in states which have already set up strict used oil regulations, due to the lack of Federal action in this area, will not have to compete with companies in adjacent states that have no regulations. Also, prevention of future Superfund sites is the best way of reducing future liability and insurance expense for these companies.

As you know, cleaning up the environment is a cost that is borne by all of industry and eventually the general public.

Prevention of a new major Superfund site could save our economy $50,000,000 to $100,000,000. Savings such as this would more than offset any additional costs which might be incurred as a result of the proposed EPA regulations.

Our Company has helped develop legislation which will offer incentives for companies to recycle their used oil. This has resulted in the enactment of the Used Oil Recycling Act of 1980. However, for a viable, growth oriented and environmentally acceptable recycling industry to exist, uncontrolled, environmentally damaging alternates must be eliminated.

Remember also, most of our laws, including the EPA's, are self-enforcing. For this concept to work there must be either incentives for compliance, or a large penalty for non-compliance. Classifying used oil as a hazardous material and the setting up of incentives, controls and penalties as defined in the November 29, 1985 Federal Register accomplishes this goal. The legislation introduced by yourself and Representative Skelton, in which incentives are offered to companies which assure that their oil is properly recycled or managed, also meet this goal, as well as possibly reducing the costs of compliance for all concerned.

Establishing programs to eliminate long-term, poor environmental practices will always be plagued with opposition. I know that you will come to the same conclusion that our company has; that is, providing quality long-term, reliable service will reward you with long-term consumers and constituents. Our company is committed to continuing to provide this type of service on an expanding basis.

Finally, remember that recycling oil not only helps the environment but also conserves a limited natural resource.

APPENDIX E.--COMMENTS TO NOTICES OF PROPOSED RULEMAKING BY EPA, SUBMITTED BY ROBERT J. WARDELL, PRESIDENT, COPPER & BRASS FABRICATORS COUNCIL, INC.

COPPER & BRASS FABRICATORS COUNCIL, INC.
1050 SEVENTEENTH STREET, N.W
WASHINGTON, D. C. 20036
SUITE 440
TELEPHONE (202) 833-8575

April 9, 1986

BY HAND

RECEIVED
APR 9

Docket Clerk
Office of Solid Waste (WH-562)
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

Re: Docket No. 3001/Listing of Used Oil

Dear Sir or Madam:

On March 20, 1986, the Environmental Protection Agency (EPA) published a "notice of proposed data availability and request for comments" pertaining to its ongoing rulemaking regarding regulation of used oil (51 Fed. Reg. 8206). The following comments are submitted on behalf of the Copper & Brass Fabricators Council, whose members account for approximately 80% of the United States production of brass mill products. These comments supplement those filed by the Council on February 12, 1986, which stress that EPA lacks any current data to justify the listing and regulation of used oil at the point of generation by members of the Council.

The Council has reviewed the rulemaking docket in search of any "new information" regarding the composition of used industrial oil at the point of generaiton. It was unable to find any new data supplementing the Agency's scant information on such used oil. Accordingly, the Council reiterates its position that the Agency lacks an adequate foundation for its proposed regulation.

EPA requests comment on the desirability of limiting its listing of used oil as a hazardous waste to cover used oil only when disposed and regulating the recycling of used oil exclusively under Section 3014(a) of the Resource Conservation and Recovery Act (RCRA). It is the Council's position that no regulation of industrial used oil at the point of generation is necessary to protect human health and the environment. Nevertheless, if the Agency insists on imposing such regulations, the Council would favor EPA's proceeding exclusively under Section 3014(a), originally added to RCRA by the Used Oil Recycling Act of 1980. This provision, in contrast to Section 3014(b), added by the 1984 amendments to RCRA, does not require application of RCRA Section 3004 standards to used oil recycling practices. (Section 3014 (b) applies only to recycled used oil that has been identified and listed as a hazardous waste.)

Thus, if EPA were to forswear listing of recycled, used industrial oil as a hazardous waste, it need not regulate its recycling and reuse at point of generation. Alternatively, it could craft a regulatory scheme less onerous than that proposed on November 29, 1985. This scheme, while it limits permitting burdens through a "permit-by-rule" approach, will be extremely burdensome, especially if EPA proceeds with its proposed rule to require secondary containment for all tanks and ancillary equipment.

An EPA determination to avoid listing of recycled used oil as a hazardous waste could have other significant benefits for members of the Council. Presumably, mixtures of recyclable used oil and other non-hazardous materials would not be deemed hazardous waste by virtue of EPA's "mixture rule." Thus, scrap metal which may have some used oil on it, will not be implicated as hazardous waste simply by virtue of the mixture rule.

For the foregoing reasons, the Council would support an EPA determination to regulate recycled used oil exclusively pursuant to Section 3014 (a). In addition, the Council submits that any such regulatory regime would not be necessary or appropriate for the onsite used oil recycling practices of the copper and brass fabricating industry.

Sincerely,

Robert J. Wardell
President

John T. Smith II
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044

Of Counsel

W-88

COPPER & BRASS FABRICATORS COUNCIL, INC.
1050 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036
SUITE 440
TELEPHONE (202) 833-8575

February 11, 1986

Docket Clerk
Office of Solid Waste (WH-562)
U.S. Environmental Protection Agency
401 M Street, S.W.
Room SE-212, Mall Entrance
Washington, D.C. 20460

Dear Sir:

Attached please find the comments of the Copper & Brass Fabricators Council, Inc. with respect to notices of proposed rulemaking by EPA governing classification and management of used oil.

Sincerely,

Robert J. Wardell
President

W-33
Enclosure

BEFORE THE
UNITED STATES ENVIRONMENTAL PROECTION AGENCY

Notices of Proposed Rulemaking	))))	Docket Nos. 3001/Listing of Used Oil AND 3014/Standards for Recycled Oil

COMMENTS OF THE COPPER & BRASS FABRICATORS COUNCIL

By Federal Register notices of November 29, 1985, the Environmental Protection Agency ("EPA") has proposed to list "used oil" as a hazardous waste (50 Fed. Reg. 49258), and to establish special management standards governing the recycling of used oil (50 Fed. Reg. 49213). These proposals embrace not only automobile and truck crankcase oil but also a wide universe of "industrial" oils including those used as hydraulic and metalworking fluids.

The Copper & Brass Fabricators Council (the "Council") represents 18 domestic brass mill companies, which account for approximately 80 percent of the U.S. production of brass mill products. These companies roll, draw, or extrude from copper and copper alloys various types of brass mill products such as plate, sheet, strip, tube, pipe, rod and nonelectrical (mechanical) wire. In these activities the Council's members use industrial oils as hydraulic, cooling and metal working fluids.

Members of the Council use oils for these purposes in undiluted and in highly diluted forms. The highly diluted oil-water emulsions constitute the highest volume of used oils generated by the industry. When these oils become spent they must be reclaimed or treated on site, or sent offsite to used oil processors or refiners. Accordingly, the members of the Council will be vitally affected by any final determination by EPA to regulate industrial used oils as hazardous waste.

The Council opposes EPA's November 29, 1985, proposals, insofar as they list and regulate as hazardous wastes, at point of generation, industrial used oils generated by copper and brass fabricators. EPA lacks adequate data to support its broad listing decision with respect to such industrial oils. Moreover, EPA has not adequately assessed the practical consequences of its proposed regulations for industrial generators who treat, recycle or reuse such oil on the site of generation. These practical consequences may be large, taking into account the hazardous waste "residue" and "mixture" rules set forth in 40 C.F.R. § 261.3.

I. EPA Lacks Adequate Data for Its Listing of Industrial Oils

The Council has closely reviewed EPA's development and background documents for the proposed listing -- especially as they pertain to industrial used oils. While EPA purports to base its determination to list used oils as hazardous waste on more than 1000 samples, its data base regarding industrial oils at point of generation is remarkably thin.

Only approximately 40% of the 1071 used oil samples that were analyzed could be classified as between automotive and industrial.*/ In fact, as the attached Exhibit A prepared by the Council demonstrates, the Agency has only 41 samples of cutting and machine oils, four samples of cooling oils and seven samples of hydraulic oils taken at point of generation, i.e. before possible mixing and adulteration.

EPA's own development document recognizes that "[t]he levels of metals and chlorinated organics detected in industrial samples taken directly from generators are quite a bit below the levels measured in samples received from collectors and processors" and concludes that "collectors and processors tend to mix contaminated materials into used oils . . . ." Id. at 3-37. Because of this acknowledged phenomenon, EPA cannot fairly rely upon samples of industrial oil taken after submission to collectors and processors; rather, its listing decision should be based upon data regarding used industrial oil at point of generation.

As the attached Exhibit B demonstrates, of the total of 52 point-of-generation samples of industrial used oil, 22 were definitely taken prior to the November 19, 1980 effective date of RCRA regulations. Further, the 13 samples derived from the work of S.C. Cheng, et al. were obtained from a literature search conducted in 1981 and, accordingly, are of uncertain date.*/ Prior to the effective date of RCRA regulations, generators of used oils may have been less circumspect than they are today about allowing mixing, incidental or otherwise, of spent solvents or other wastes with used oil, and about controlling levels of metals in used oil.

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*/ Franklin Associates, Ltd., Composition and Management of Used Oil Generated in the United States, 3-26 (September 1984).

Exhibit B further demonstrates that the 17 samples of identifiable used industrial oil that undoubtedly post date November 1980, were found to contain the constituents that are the basis for the proposed listing at concentrations above the detection limit in only approximately 25% of the analyses. (These constituents are set forth in EPA's proposed amendment to Appendix VII of 40 C.F.R. Part 261, 50 Fed. Reg. at 49270.

The attached analyses further show that only 19 of the 52 samples, which EPA can attribute to specific industrial activities, are identified by means of a SIC code. None of these appear to be from copper and brass fabricators; only three appear to be from the primary metals sector; and all were collected prior to November 1980.

The Council respectfully submits that EPA lacks sufficient, current data generally to classify industrial used oils as hazardous waste at the point of their generation. As noted above, such data as the Agency does have demonstrates that these oils are lower in contaminant concentration than other used oils, even though a significant fraction of EPA's samples antedate the effectiveness of RCRA regulations. If the Agency's concern is with used oils contaminated in the course of collection and processing, it can regulate such collected used oils by means of classifying non-industrial used oils as hazardous and then applying the mixture rule of 40 C.F.R. § 261.3 to allow regulation, as appropriate, at points of collection and processing.

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*/ Telephone conversation between David Hunt of Revere, Copper & Brass Incorporated and S.C. Cheng on February 5, 1986.

If EPA is concerned about PCBs or halogenated organic solvents in industrial used oils, it need not generically classify such used oils as hazardous waste. As EPA recognizes, the PCB rules under the Toxic Substances Control Act, 40 C.F.R. Part 761, prohibit use of used oils containing any concentration of PCBs. 50 Fed. Reg. 49261. If spent solvents listed as hazardous waste under RCRA are mixed with used industrial oils, EPA's mixture rule makes the resulting mixture a hazardous waste. Thus, EPA's proposal broadly to list used industrial metal-working, cooling and hydraulic oils not only lacks a sufficient data base but also is unnecessarily broad in scope.

II. Practical Consequences of EPA's Proposed Listing

The Agency has not adequately evaluated the practical impacts of its proposed used oil standards on industrial generators at the site of generation. Apparently EPA intends its standards for "used oil recycling facilities" to apply not only to "third party" reclaimers, reprocessors, refiners, blenders and burners but also to generators who recycle or store recycled oil. Proposed § 261.41(a)(2) and § 266.43(a)(2). Nevertheless, these standards appear to have been formulated to fit the third-party handlers of used oil and not generators.

These standards are to be applied by means of a permit-by-rule scheme, unless the person managing used recycled oil is also managing other hazardous wastes at the "facility." Proposed § 270.60(d)(1) (iii). EPA has taken the position that in the context of an industrial plant the term "facility" means the "entire site that is under the control of the owner or operator engaged in hazardous waste management." 50 Fed. Reg. 28792, 28712 (July 15, 1985). Apparently, therefore, EPA plans to apply full RCRA permit requirements to the management of recycled oil at any plant managing any other hazardous waste, even if other hazardous waste management takes place at a different location at the plant site.

Copper and brass fabricators typically recycle and reuse industrial oils, sometimes storing them in drums or tanks prior to filtering them prior to reuse. In other cases, filtration of hydraulic or other oils is carried out as a continuous process. If EPA takes the position, consistent with its revised definition of solid waste, that such storage prior to filtration and reuse constitutes hazardous waste management, 50 Fed. Reg. 614 (Jan. 4, 1985) and 40 C.F.R. § 261.2 (1985), the consequences for copper and brass fabricators may be onerous.

For instance, the Council wonders whether it will be EPA's position that filtration of used oil prior to reuse constitutes hazardous waste management subject to the recycled oil standards. Moreover, if such used oil is filtered at a plant that also engages in management of other hazardous waste at a different location, will the used oil filtration require full permitting and imposition of the 40 C.F.R. Part 264 standards? How will the Agency view the process of breaking emulsions and dewatering of soluable oils? Members of the Council use oil/water emulsions, which typically contain only 5% oil. If they seek to break down this emulsion and send the water to a wastewater treatment unit, will the water be considered a "residue" from treatment of a hazardous waste, which is itself a hazardous waste? See 40 C.F.R. § 261.3.

In this latter event, will the entire wastewater treatment train at the facility become subject to regulation as a hazardous waste management facility, unless it consists entirely of tanks subject to exemption under 40 C.F.R. §§ 264.1(g)(6) or 265.1(c)(10)? Apparently, EPA intends to apply the residue rule to those residues resulting from treatment of used oil but to allow such residues to be handled pursuant to the recycled oil standards rather than full RCRA permit standards. 50 Fed. Reg. at 49262-63. But what regime will apply at a "facility" managing other hazardous waste in a different location?

The Council submits that such activities by fabricators need not be regulated as hazardous waste management in order to protect human health and the environment. Moreover, such unnecessary regulation could discourage the recovery and recycling of used oil contrary to express congressional direction in the Used Oil Recycling Act of 1980.

III. Recommendations of the Copper & Brass Fabricators Council

The Council urges EPA to withdraw its proposal to regulate used hydraulic, cooling and metal-working oils at their point of generation, unless or until the Agency develops adequate data to support such a listing. The Council plans to undertake a systematic survey of the composition of such used oils generated by copper and brass fabricators. We are confident, based upon preliminary data, that this survey will show that these oils contain very low concentrations, if any, of the hazardous constituents identified by EPA as its basis for listing of used oil. Proposed amendment to Appendix VII of 40 C.F.R. Part 261, 50 Fed. Reg. at 49270. The Council does not oppose EPA's proposal to regulate such used oils after they are received by offsite collectors and processors, for we cannot vouch for the composition of such oils after such mixing as may take place at such facilities.

EPA has ample discretion to act on the Council's recommendation. New Section 3014(b) does not require EPA to list or identify all used oils as hazardous waste under Section 3001 of RCRA. Moreover, should EPA subsequently determine that regulation of such used oils at point of generation is necessary to protect human health and the environment, it will retain full discretion to do so after the November 8, 1986, deadline for its first determination in this regard.

Should EPA, nevertheless, proceed to list industrial used oils at point of generation by copper and brass fabricators as hazardous wastes, the Council recommends that any such listing include expedited procedures for "delisting." Such delistings or exclusions should be available not only on a facility-specific basis pursuant to 40 C.F.R. §§ 260.20 and 260.22, but also by means of generic or class proceedings. Thus, for example, members of the Council should have an opportunity to demonstrate on an industry-wide basis that metal-working emulsions, which become spent at point of generation, contain _de minimis_ quantities of hazardous constituents and, accordingly, should not be hazardous wastes.

EPA has recognized that its used oil listing may trigger numerous delisting petitions that could "unnecessarily overtax the Agency's delisting resources." 50 Fed. Reg. at 49265. The Council notes that the Agency's "delisting resources" appear to have been overtaxed since the inception of the RCRA program and that a new wave of petitions pertaining to used oil will stretch these resources still further. Apparently, EPA considered an approach that would set benchmarks for concentrations of hazardous constituents. Oils not containing these concentrations would not be hazardous. _Id_. The Council would favor such an approach and urges EPA to reconsider its rejection.

The Agency also requested comment on "particular used oils" that should be "specifically excluded" from the delisting. For the reasons outlined in these comments, the

Council believes that metalworking, hydaulic and cooling oils generated by copper and brass fabricators should be excluded from the listing -- at least at the point of their generation. Alternatively, the Council urges EPA to provide expeditious means for obtaining delistings on a more generic basis that is allowed by current regulations.

IV. Other Issues

Scrap Metal

Witnesses at public hearings on the proposed listing rule have pointed out that small amounts of used oil are present in all or most scrap metal.*/ It is imperative that EPA clarify any final listing for used oil so as to provide appropriate exclusion for incidental used oil associated with scrap metal. The Council assumes that EPA did not intend to sweep such scrap metal into its used oil listing by virtue of the hazardous waste mixture rule, and we are confident, therefore, that EPA will tailor any final regulation to avoid this result. Copper and brass fabricators use large amounts of scrap. This scrap typically has small amounts of used oil associated with it. Any listing that included such scrap within the ambit of hazardous waste would have a severe impact on the industry.

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*/ See, e.g., Statement of Herschel Cutler, Institute of Scrap, Iron and Steel Inc. (January 16, 1986).

Exclusion for Certain Mixtures

EPA proposes to amend its hazardous waste mixture rule, 40 C.F.R. Part 261.3(a)(2)(iv), to exclude certain mixtures of wastewater and "de minimis" losses of various industrial oils. The sludge generated from the treatment of such mixtures would not be a "residue" from treatment of a hazardous waste. Nevertheless, to avoid possible confusion in light of the breadth of EPA's proposed listing of used oil, the Agency should also specifically exclude such residues containing *de minimis* quantities of used oil. Should EPA proceed with its listing of industrial used oils at point of generation, these exclusions from the mixture and residue rules will be vital necessities.

EPA also proposes to exclude from the definition of hazardous used oil "industrial wipers" contaminated with used oil, including shop towels, rags and disposable wipers. The Council recommends that this exclusion be given the broadest possible scope to include all devices used for clean up of industrial oils at manufacturing facilities (should EPA persist in its listing of such wastes).

Respectfully submitted,

Robert Wardell

Robert Wardell
President, Copper & Brass
Fabricators Council
1050 17th Street, N.W.
Washington, D.C. 20036

John T. Smith II
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20044

Of Counsel

EXHIBIT A

COPPER & BRASS FABRICATORS COUNCIL, INC.

EXHIBIT "A"

ANALYSIS OF APPENDIX "A"
Industrial Oils - Samples Taken From Generator

Sample Number	Source	Date of Publish	SIC	Code	Flash Point (Deg. F)	Metals							Volatile Organics				PNAs	PCBs
						Arsenic	Cadmium	Chromium	Copper	Lead	Nickel	Zinc	1,1,1-Tri-chloro-ethane	Trichloro-ethylene	Tetrachloro-ethylene	Toluene	Naphtha-lene	
93	A-24	1978	345	01			14		6.7	3.6		123						
94	A-24	1978	356	01	135		0.1	0.01	0.6	0.6		0.7						
113	A-24	1978	356	01	150		0	8	1	4		28						
115	A-24	1978	356	01			0.2	10	5	84		90						
116	A-24	1978	352	01	150		0.1	3	12	17		38						
118	A-24	1978	345	01	150		0.4	0.5	4	8		51						
119	A-24	1978	3312	01	475		2	45	140	19	44	4						
120	A-24	1978	3519	01	525		0	4	4	90	4	1						
121	A-24	1978	3312	01	315		0	2	3	7	3	39						
122	A-24	1978	3312	01	470		0	8	3	170	5	10						
123	A-24	1978	3451	01			0	4	0	4	4	14						
124	A-24	1978	3714	01	200		1	5	16	230	5	39						
125	A-24	1978	3452	01	330		19	4	11	100	4	530						
126	A-24	1978	3522	01	235		0	15	27	31	10	30						
127	A-24	1978	3462	01	195		1	18	25	170	29	23						
128	A-24	1978	3452	01	200		1	1	3	11	10	7						
129	A-24	1978	3741	01	355		1	5	120	19	7	200						
130	A-24	1978	3452	01	325		0	9	6	6	4	3						
131	A-24	1978	3522	01	220		1	14	34	55	12	100						
138	A-19	(1978)		01				5	3	4	0	200						
139	A-19	1978		01	270		5	1	12	8	0	190						
147	A-40	1982		01			0.7	1.2	5.9		1.2	150						
148	A-40	1982		01						51								
150	A-40	1982		01					8					52		13		<50
151	A-40	1982		01			0.12	0.1	0.9		2.1	0.7				<21.2		24.3
152	A-40	1982		01			3	20	150	15	5	12						
154	A-40	1982		01														
155	A-40	1982		01	270		5	1	12	8	0	190						
156	A-40	1982		01	102	<0.01	4	520	96	3500	300	43						
158	A-40	1982		01			21	7	15	50	4	160						
159	A-40	1982		01			0.22	0.24	0.08	0.01	0.12	1.2						7
160	A-40	1982		01			4	5	3	4	0	200						
686	A-48	1983		01	200	<5	<0.5	<0.5	0.55	5	<1.0	2.5	<16	<16	<16	<16		
687	A-48	1983		01	160	<5	<0.5	<0.5	<0.5	5	<1.0	0.53	<15	<15	<15	<15		<5
734	A-48	1983		01														
735	A-48	1983		01									<7	<7	<7	<7		
827	A-48	1983		01		<5	<0.5	<0.5	<0.5	11	<1	7.9	<14	<14	1300	1000		1900
829	A-48	1983		01	200	<5	0.51	<0.5	610	2000	<1	80	<10	<10	<10	<10		<5
830	A-48	1983		01	200	<5	<0.5	<0.5	8.5	87	<1	39	<2	4.1	2.2	8.1		<5
832	A-48	1983		01	154	<5	<0.5	<0.5	9.8	19	<1	220	<15	<15	<15	<15		<5
833	A-48	1983		01	150	<5	0.56	<0.5	9.8	16	<1	200	<14	<14	<14	<14		<5

Total samples of Cutting Oils 41

Continued page 2

Exhibit "A" 2

Sample Number	Source	Date of Publish	SIC Code	Flash Point (Deg. F)	Metals							Volatile Organics				PNAs	PCBs
					Arsenic	Cadmium	Chromium	Copper	Lead	Nickel	Zinc	1,1,1-Tri-chloro-ethane	Trichloro-ethylene	Tetrachloro-ethylene	Toluene	Naphtha-lene	
153	A-40	1982	02			<0.01	<0.01	13	21	<.01	14						
834	A-48	1983	02		<5	<0.5	2.2	1.4	44	<1	3.7	<16	<16	<16	<16		<5
835	A-48	1983	02	200	<5	<0.5	1.5	4	330	<1	2.3	<15	<15	<15	<15		<5
836	A-48	1983	02	200	<5	<0.5	1.5	3.6	290	<1	1.9	<16	<16	<16	<16		<5
Total samples of Cooling Oils 4																	
146	A-19	1978	03	415		4	3	7	0	0	600						
149	A-40	1983	03			2.5	0.1	9.3		0.4	0.8						
596	A-48	1983	03	>200	<5	<.5	2.1	5.2	<5.0	<1.0	69	<4	<4	<4	<4		<5
645	A-48	1983	03	>200	<5	0.5	0.5	5.2	5	<1.0	210	<4	<4	<4	6300		<5
684	A-48	1983	03	132	<5	<0.5	<0.5	<0.5	5	<1.0	<0.5	<7	<7	<7	<7		<5
685	A-48	1983	03	102	<5	1.3	0.39	19	5	<1.0	17	62000	<11	<11	170		<5
704	A-48	1983	03	200	<5	<0.5	<0.5	4	5	<1	16	<3	<3	<3	9		<5
Total samples of Hydraulic Oils 7																	

Source Code: A-19 & A-24 Yates, J.J., and K.G. Croke. Used oil recycling in Illinois Data Book. October 1978

A-40 Cheng, S.C., et al. Alternate Treatment of Organic Solvents and Sludges From Metal Finishing Operations. January 15, 1982 (Draft Report) (Per S.C. Cheng Literature search only, no new analysis.)

A-48 Unpublished analytical data developed for the Office of Solid Waste, U.S. EPA by ERCO, 1983.

Oil Type:
01 - Cutting or machine oils
02 - Cooling oils
03 - Hydraulic oils
04 - Unknown oil type

EXHIBIT B

COPPER & BRASS FABRICATORS COUNCIL, INC.

EXHIBIT "B"

Industrial Oils

Sample Number	Source	Date of Publish	SIC	Code	Flash Point (Deg. F)	Metals							Volatile Organics				PNAs	PCBs
						Arsenic	Cadmium	Chromium	Copper	Lead	Nickel	Zinc	1,1,1-Tri-chloro-ethane	Trichloro-ethylene	Tetrachloroethylene	Toluene	Naphtha-lene	
93	A-24	1978	345	01			14		6.7	3.6		123						
99	A-24	1978	356	01	155		0.1	0.01	0.6	0.6		0.7						
113	A-24	1976	354	01	150		0	0	1	4		28						
115	A-24	1978	356	01			0.2	10	5	84		90						
116	A-24	1978	352	01	150		0.1	3	12	17		38						
118	A-24	1978	345	01	150		0.4	0.5	4	8		51						
119	A-24	1978	3312	01	475		2	43	140	19	44	4						
120	A-24	1978	3519	01	525		0	4	4	90	4	1						
121	A-24	1978	3312	01	315		0	2	3	7	3	39						
122	A-24	1978	3312	01	470		0	8	3	170	5	10						
123	A-24	1978	3451	01			0	4	0	4	4	14						
124	A-24	1978	3714	01	280		1	5	16	230	5	39						
125	A-24	1978	3452	01	330		19	4	11	100	4	530						
126	A-24	1978	3522	01	235		0	15	27	31	10	30						
127	A-24	1978	3462	01	195		1	18	25	170	29	23						
128	A-24	1978	3452	01	280		1	1	3	11	10	7						
129	A-24	1978	3741	01	355		1	5	120	19	7	200						
130	A-24	1978	3452	01	325		0	9	6	6	4	3						
131	A-24	1978	[illegible]	01	220		1	14	34	55	12	100						
138	A-19	(1978)		01				5	3	4	0	200						
139	A-19	1978		01	270		5	1	12	8	0	190						
146	A-19	1978		03	415		4	3	7	0	0	600						

Samples Prior to RCRA, 22

Sample Number	Source	Date of Publish	SIC	Code	Flash Point (Deg. F)	Arsenic	Cadmium	Chromium	Copper	Lead	Nickel	Zinc	1,1,1-Tri-chloro-ethane	Trichloro-ethylene	Tetrachloroethylene	Toluene	Naphtha-lene	PCBs
147	A-40	1982		01			0.7	1.2	5.9		1.2	150						
148	A-40	1982		01						51								
150	A-40	1982		01					8					52		13		<50
151	A-40	1982		01			0.12	0.1	0.9		2.1	8.7				<21.2		24.3
152	A-40	1982		01			3	28	150	15	5	12						
154	A-40	1982		01														
155	A-40	1982		01	270		5	1	12	8	0	190						
156	A-40	1982		01	102	<0.01	4	520	96	3500	300	43						
158	A-40	1982		01			21	7	15	50	4	160						
159	A-40	1982		01			0.22	0.24	0.08	0.01	0.12	1.2						7
160	A-40	1982		01			4	5	3	4	0	200						
153	A-40	1982		02			<0.01	<0.01	13	21	<.01	14						
157	A-40	1982		03			2.5	0.1	9.3		0.4	0.8						

Samples of unknown date, 13

Continued page 2

Exhibit "D" 2

Sample Number	Source	Date of Publish	SIC Code	Flash Point (Deg. F)	Metals: Arsenic	Cadmium	Chromium	Copper	Lead	Nickel	Zinc	Volatile Organics: 1,1,1-Tri-chloro-ethane	Trichloro-ethylene	Tetrachloroethylene	Toluene	PNAs: Naphtha-lene	PCBs
606	A-48	1983	01	200	<5	<0.5	<0.5	0.35	5	<1.0	3.5	<16	<16	<16	<16		
607	A-48	1983	01	160	<5	<0.5	<0.5	<0.5	5	<1.0	0.53	<15	<15	<15	<15		<5
734	A-48	1983	01														
735	A-48	1983	01									<7	<7	<7	<7		
827	A-48	1983	04		<5	<0.5	<0.5	<0.5	11	<1	7.9	<14	<14	1300	1800		1900
829	A-48	1983	01	300	<5	0.51	<0.5	610	2000	<1	88	<10	<10	<10	<10		<5
830	A-48	1983	01	200	<5	<0.5	<0.5	0.5	87	<1	39	<2	4.1	2.2	8.1		<5
832	A-48	1983	01	154	<5	<0.5	<0.5	9.8	19	<1	220	<15	<15	<15	<15		<5
833	A-48	1983	01	150	<5	0.56	<0.5	9.8	16	<1	200	<14	<14	<14	<14		<5
834	A-48	1983	02		<5	<0.5	2.2	1.4	44	<1	3.7	<16	<16	<16	<16		<5
835	A-48	1983	02	300	<5	<0.5	1.5	4	330	<1	2.3	<15	<15	<15	<15		<5
836	A-48	1983	02	300	<5	<0.5	1.5	3.6	290	<1	1.9	<16	<16	<16	<16		<5
596	A-48	1983	03	>200	<5	1.5	2.1	5.2	<5.0	<1.0	48	<4	<4	<4	<4		<5
645	A-48	1983	03	>200	<5	0.3	0.5	5.3	5	<1.0	210	<4	<4	<4	6300		<5
684	A-48	1983	03	132	<5	<0.5	<0.5	<0.5	5	<1.0	<0.3	<7	<7	<7	<7		<5
685	A-48	1983	03	102	<5	1.3	0.59	19	5	<1.0	17	62000	<11	<11	170		<5
784	A-48	1983	03	300	<5	<0.5	<0.5	4	5	<1	16	<3	<3	<3	9		<5

Samples since RCRA, 17

Source Codes: A-19 & A-24 Yates, J.J., and R.G. Crobe. Used oil recycling in Illinois
Data Book. October 1978

A-48 Cheng, S.C., et al. Alternate Treatment of Organic Solvents and Sludges
From Metal Finishing Operations. January 15, 1982 (Draft Report)
(Per S.C. Cheng Literature search only, no new analysis.)

A-48 Unpublished analytical data developed for the Office of
Solid Waste, U.S. EPA by ERCO, 1983.

Oil Type: 01 - Cutting or machine oils

02 - Cooling oils

03 - Hydraulic oils

04 - Unknown oil type

APPENDIX F.--PREPARED STATEMENT FROM FRED HANSEN, DIRECTOR, DEPARTMENT OF ENVIRONMENTAL QUALITY, STATE OF OREGON

VICTOR ATIYEH
Governor

Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

May 16, 1986

The Honorable Charles Steinholm, Chair
and Members of the Subcommittee on Energy and the Environment
Committee on Small Business
B363 Rayburn Building
Washington, D. C. 20515

Dear Chairman Steinholm and Members of the Subcommittee:

On November 29, 1985, the United States Environmental Protection Agency (EPA) published in the Federal Register proposals to list used oil as a hazardous waste and to set management standards for oil that is recycled. The Oregon Department of Environmental Quality (DEQ) believes that the proposed management standards for generators of used oil, combined with the proposal to regulate oil from households as hazardous waste when that oil is collected for recycling, would have a very negative impact on programs to recycle household generated oil from do-it-yourself oil changers. At the same time, DEQ believes that EPA has presented convincing arguments that used oil contains toxic components of great concern, including components such as benzene and naphthalene that are also present in substantial quantities in new (unused) oil. DEQ also believes that EPA has presented convincing arguments, based on past bad practices, that regulation is needed on the processing, blending, and transporting of used oil, and that oil should be tested for hazardous wastes and other contaminants before being sold to burners or other end-users of the oil.

Unlike other hazardous wastes, nearly half of all used oil is generated by households, from do-it-yourself oil changers. Also, unlike hazardous waste, used oil has been recycled because most firms that pick up used oil from small business generators have in the past paid rather than charged for the oil they collect. DEQ believes that most firms will resume paying the generators for their used oil when the cost of crude oil climbs to near its price of a year ago, provided that the management standards that EPA imposes on the used oil management system do not substantially increase the cost-of handling and using used oil.

Some household-generated used oil and nearly all business-generated used oil is presently recycled. Oregon now has more than 400 identified recycling depots that accept oil from the public. In addition, Oregon is now implementing its new "Opportunity to Recycling Act" that requires, at minimum, monthly home collection of identified "recyclable materials" in cities of 4,000 or more population, as well as recycling depots at disposal sites. The criterion in the Opportunity to Recycle Act for identifying recyclable material is economic. A "recyclable material" is defined in the Act as any material that can be collected and recycled for less than or equal to the cost of collection and disposal. Oil has been identified as a "recyclable material" in all 36 Oregon counties. However, if service stations and other oil collection centers have to manage their oil as a hazardous waste, oil will not meet the criterion for recyclable material. If this happens, it is likely that most home collection programs and disposal site recycling depots will drop their oil-recycling activities. The Oregon Sanitary Services Institute, an organization representing many of the businesses that collect recyclable material from households at the curbside, has adopted the position that if its members have to register with EPA as generators of used oil hazardous waste, they will discontinue collecting oil as a recyclable material.

Presently, 40 Oregon cities have door-to-door recycling programs in place that will collect used oil along with other recyclable materials from homes and small businesses. This should increase to 70 cities by the July 1, 1986 implementation date of the Oregon Opportunity to Recycle Act, provided that the price of used oil does not decline substantially by then.

DEQ would like EPA to regulate the recycling of used oil under the authority of the Used Oil Recycling Act (now Section 3014 of RCRA) rather than under the hazardous waste provisions of RCRA (Sections 3001 to 3006). Not having the liability and stigma associated with hazardous waste will be very important in convincing businesses to continue or begin collecting used oil from the public. Oil being disposed of or used in a manner constituting disposal should, however, be regulated as though it were a hazardous waste.

DEQ also believes that some of the management standards proposed by EPA are too strict, and would have a negative impact on household oil collection programs. In particular, DEQ does not believe that oil collected directly from the public by a business should be included in the determination of whether the business is a small quantity or a large quantity generator of used oil. A copy of other specific comments to EPA on their proposed rules is attached.

Separate from the proposed regulation, DEQ believes that EPA can take other actions to protect human health and the environment by promoting the recycling of used oil. The most important of these actions is to assist state and local governments and private businesses on procurement of products made from recycled oil. Federal, state, and local governments could be a major market for used oil. They are major users of heavy oil fuel, and burn far more virgin oil fuel each year than the total amount of used oil generated in the entire country. Many of the boilers used by these governments and agencies could safely burn specification used oil fuel. In addition, government agencies could also procure re-refined lubricating oil in preference to virgin oil. If government agencies used recycled oil products whenever safely possible, this expansion in market for used oil could outweigh any reduction in oil markets caused by the proposed regulation.

Sincerely,

Fred Hansen

Fred Hansen
Director

FH:m
SM296
Enclosure

VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-[illegible]

February 11, 1986

Docket Clerk
Office of Solid Waste WH-562
U.S. Environmental Protection Agency
401 M Street SW
Washington, DC 20460

Enclosed are comments by the Department of Environmental Quality (DEQ) on the EPA proposed used oil rules, including "Recycled Used Oil Standards" (Docket No. 3014) and "Identification and Listing of Hazardous Waste; Used Oil" (Docket No. 3001). Both these proposed rules were published by EPA on November 29th, 1985.

In summary, DEQ believes that EPA can protect human health and the environment by insuring that any regulations adopted encourage, or at least do not discourage, the recycling of household-generated used oil. Although cost is not, and should not be, a direct criterion by which regulation should be judged, cost is none-the-less an important indirect criterion as high cost can be a strong disincentive to oil depots and recyclers collecting used oil from the public. In the enclosed comments, DEQ suggests specific changes to reduce economic and other regulatory disincentives to recycling that might be created by the proposed rules.

Separate from the proposed regulation, DEQ believes that EPA can take two other actions to protect human health and the environment by promoting the recycling of used oil. One possible action is assistance to states for discretionary programs for recycled oil, authorized in Section 4008 subsection (f) of RCRA. Even more effective, however, would be action regarding federal procurement of products made from recycled oil, authorized under Subtitle F Section 6002 of RCRA. EPA can also use its expertise to assist state and local governments on procurement of products made from recycled oil. Federal, State, and local government agencies are major users of oil fuel, and likely burn far more virgin oil each year than the total amount of used oil generated in the entire country. Many of the boilers used by these agencies could safely burn specification oil fuel. In addition, some of the boilers are also of sufficient size, design, and efficiency that they could safely burn off-specification used oil or oil that has inadvertently been mixed with small quantities of spent halogenated solvents. In addition, government agencies could also procure re-refined lubricating oil in preference to virgin oil. If government agencies used recycled oil products whenever safely possible, this expansion in market for used oil products could outweigh any reduction in oil markets caused by the proposed regulation.

Sincerely,

Fred Hansen
Director

PHS
Enclosures
cc: Mike Gearheard, EPA OOO

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VICTOR ATIYEH
GOVERNOR

Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

COMMENTS ON PROPOSED LISTING OF USED OIL AS HAZARDOUS WASTE
EPA Proposed Rule
Federal Register Vol. 50 No. 230 pp. 49258-49270

The Environmental Protection Agency has provided solid evidence that used oil commonly and regularly contains toxic constituents that could pose hazards to human health and the environment if not properly managed. The Department of Environmental Quality (DEQ) agrees that some regulation is needed concerning the disposal or reuse of used oil.

On the other hand, DEQ believes that listing used oil as a hazardous waste would have a negative impact on the recycling of household-generated oil. This is because if used oil were listed as a hazardous waste, generators including oil recycling depots and programs would have "cradle to grave" liability for the oil under CERCLA, the Comprehensive Environmental Response, Compensation, and Liability Act. This liability, and probable increases in insurance premiums, could dissuade recyclers from collecting and recycling oil.

The DEQ would like EPA to explore the possibility of regulating used oil under some authority other than the authority granted under Sections 3001 to 3006 to list hazardous wastes and set standards for the management of these wastes. EPA certainly has the authority to regulate recycled oil under Section 3014 regardless of whether oil is listed as a hazardous waste. If EPA could also find or develop the authority to regulate the disposal of oil, then the entire system of oil management could be regulated without the liability associated with hazardous waste.

DEQ agrees that EPA should exempt "oily wipers" such as oil-soaked rags from regulation, since the amount of oil lost or disposed of in this manner is of minimal importance. DEQ is uncertain as to how the proposed listing would affect automotive oil filters. Since used filters contain used oil residue, they would presumably have to be treated as any other hazardous waste and thus manifested off site to a treatment, storage, and disposal facility authorized to accept them. The amount of oil disposed of in filters is only a small fraction of the total amount of used oil generated. However, the oil in filters may have particularly high concentrations of toxic contaminents due to the filtering action. DEQ believes that EPA should evaluate the risk involved with disposal of used oil filters. If EPA decides to list used oil filters as a hazardous waste, it should be done as a proposed rule with the opportunity for further comment.

DEQ is also concerned with the financial impact that these proposed regulations will have on state hazardous waste programs in an era of declining federal and state funding. DEQ agrees that the management of used oil needs to be regulated, but feels that to implement stringent regulation may compete with more significant and risky hazardous waste issues.

Department of Environmental Quality

522 S.W. FIFTH AVENUE, BOX 1760, PORTLAND, OREGON 97207 PHONE (503) 229-5696

COMMENTS ON "RECYCLED USED OIL STANDARDS"
EPA Proposed Rule
Federal Register Vol. 50 No. 230 pp. 49212-49258

BACKGROUND

Used oil differs substantially from other hazardous waste for a number of reasons:

1) Unlike other hazardous waste, nearly half of all used oil is generated by households, and would be exempt from the proposed rule listing used oil as hazardous waste unless accumulated for recycling.

2) Unlike other hazardous waste, substantial amounts of used oil are generated by generators in the 100 to 1000 kilograms per month range.

3) Unlike most other hazardous wastes, there are collection businesses that buy unprocessed used oil, although the average price paid in Oregon has dropped 60% or more in the past year.

Some household-generated used oil and nearly all business-generated used oil is presently recycled. Oregon now has more than 400 identified recycling depots that accept oil from the public. In addition, Oregon is now implementing its new "Opportunity to Recycling Act" that requires, at minimum, monthly home collection of identified "recyclable materials" in cities of 4,000 or more population, plus recycling depots at disposal sites. The criterion in the Opportunity to Recycle Act for identifying recyclable material is economic. A "recyclable material" is defined in the Act as any material that can be collected and recycled for less than or equal to the cost of collection and disposal. Oil is presently identified as a "recyclable material" in all 36 Oregon counties. However, if service stations and other oil collection centers have to start paying to have their oil managed as a hazardous waste, oil will no longer meet the criterion for recyclable material. If this happens, it is likely that most home collection programs and and disposal site recycling depots will drop their oil-recycling activities. Presently, 35 Oregon cities have door-to-door recycling programs in place that will collect used oil along with other recyclable materials from homes and small businesses. This should increase to 70 cities by the July 1, 1986 implementation date of the Oregon Opportunity to Recycle Act, provided that the price of used oil does not decline substantially by then.

OREGON DEQ COMMENTS ON "RECYCLED USED OIL STANDARDS"

Section 3014 subsection (a) of the Resource Conservation and Recovery Act as amended states:

> The administrator shall ensure that such (oil recycling) regulations do not discourage the recovery or recycling of used oil, consistent with the protection of human health and the environment.

The cost of complying with regulations is not a direct criterion. However, because of the large amount of recyclable oil generated by households, any requirement that substantially adds to the cost of recycled oil management will indirectly increase the risk to human health and the environment by discouraging recycling and increasing the quantity of household and other used oil that is indiscriminately dumped or disposed of. Within the past 12 months, the price paid for used oil by collectors to their best customers in western Oregon has dropped from 25-30 cents to approximately 10 cents per gallon. This drop has been attributed in part to the declining oil prices world-wide, but also to dislocations in the used oil market place in anticipation of possible regulation, as used oil dealers scramble (for the most part unsuccessfully) to find new customers for their "off-specification" used oil.

With this background information in mind, the DEQ offers the following specific comments concerning the proposed standards for recycled used oil.

1) Standards for Used Oil Processors.

The DEQ believes that the most stringent regulation should be on oil processors, rather than on the generators and transporters of oil. Evidence cited by EPA shows that the most significant incidents involving used oil that have risked human health and the environment have occurred due to unsafe practices by blenders and processors of used oil. This has been the case in the Northwest, with incidents over the past decade including a spill of PCB-containing oil from a processor who used oil for dust control, old oil-reprocessing sites that have become potential Superfund sites, and other spill and contamination incidents.

DEQ believes that in the proposed 40 CFR Part 266.43, EPA has promulgated generally appropriate regulations to govern the management of used oil by processors and blenders. The requirements for analysis will insure that used oil processors are knowledgeable of the contaminant levels in their oil. The requirements for contingency plans and emergency procedures are logical requirements that responsible processors should be following even without the impetus of regulation. The financial and closure requirements, although very expensive to the processor, will protect the public from the risks of site abandonment. However, the risks to the environment and to public safety are probably substantially less for facilities that only process used oil than they are for facilities processing other hazardous wastes, and so the same level of insurance requirements that are placed on other treatment and storage facilities should not be necessary for used oil facilities.

2) Standards for burners of off-specification oil fuel.

The DEQ believes that the proposed management standards for burners of off-specification oil fuel would strongly discourage this use of oil. We do not see a need to regulate the burners of off-specification oil fuel at the same level as oil processors are regulated, unless the burners are also acting as oil processors themselves. The DEQ believes that the regulations in proposed 40 CFR Part 266.44, which additionally subject burners of off-specification fuel to the the requirements of Part 266.43, would make the burning of used oil uneconomical for businesses. The cost of complying with all of the financial and insurance requirements, closure plan, preparedness and contingency plans would far outweigh the price differential between off-specification oil fuel and virgin fuel. This would result in the substitution of virgin fuels in places where recycled oil is presently being safely burned. Since the 1984 DEQ survey showed that more than 90% of oil that is recycled in Oregon is burned as fuel, this portion of the rule, if adopted, would lead to further dislocation of the used oil market and decline in the selling price of oil fuel. Marketers, processors, and collectors of used oil are not in a financial position to absorb this price decrease, and so the decreased price of oil fuel would be passed back as a decrease in the price (or increase in the cost) of recycled oil at the level of oil depots and generators.

Burners who buy their fuel from used oil processors will receive an analyzed product (if the analysis requirements of proposed 40 CFR Part 266.43 are adopted), and thus will know the contaminants in the oil. In contrast, processors usually receive untested oil from multiple sources, each with different levels of contaminants. Burners of used oil generally receive oil, store it temporarily in tanks, and then use the oil as needed. There is usually a minimum of on-site transporting and mixing of oil or accumulation of oil fuel, and so the risk to the environment and to public health and safety at the burner's site is less than the risk at the processors site. At present, off-specification oil is still a valuable product, commanding a price within 40 percent of the price of virgin oil fuel. Thus, burners of used oil would be expected to manage and store the oil with about as much care as they would virgin fuel products. Site-abandonment should also not be a significant problem, since the oil fuel has a value and can be sold. This again is different from the case for other hazardous wastes that can only be removed from abandoned sites at substantial cost.

There has not been a history of incidents of environmental damage involving the handling and storage of used oil by industrial burners in Oregon. In many ways, the risks involved in the storage and handling of off-specification oil fuel are not appreciably greater than the risks in storing and handling virgin fuel. For example, spills of either material into water may cause substantial environmental damage. As EPA studies show, virgin residual fuels are as likely as used oil to contain materials such as polynuclear aromatic hydrocarbons, toluene, benzene, and naphthalene. Off-specification oil fuel should not generally contain exotic toxic components such as chlorinated solvents, dioxins, or high levels of PCBs, since if these substances were mixed with oil, the oil would be fully regulated as either a hazardous waste or a PCB-containing substance. Off-specification fuel would generally have higher levels of heavy metals than virgin oil fuel, but these are mainly of concern when the oil is burned, and not of as great concern regarding management and handling. The requirements for handling of virgin residual fuels should be similar to the requirements for handling of off-specification fuels, since both contain carcinogenic compounds such as polynuclear aromatic hydrocarbons in similar levels. To pose much more stringent requirements on the handling of off-specification fuel than on the handling of virgin fuel would just cause businesses to substitute virgin fuel for used oil, resulting in the dislocation of the oil-recycling market and discouraging recycling as discussed above.

The burning of off-specification oil may pose other potential risks from air contamination. We understand that EPA will address this issue further in the coming Phase II proposed burning regulation. DEQ believes that the risk to human health and the environment caused by burning off-specification used oil in inadequately equipped boilers far exceeds the risk posed by the management of used oil by burners prior to burning, and so EPA should used the Phase II regulations to make sure that off-specification oil is burned only in properly equipped and maintained boilers. However, EPA should not use management standards to discourage all burning of off-specification used oil.

DEQ suggests the following changes:

1) List specific requirements in the proposed 40 CFR Part 266.44, rather than assigning all of the requirements of the proposed 40 CFR Part 266.43.

2) Exempt burning facilities that only burn used oil fuel and do not use or store other hazardous wastes from the proposed 40 CFR 266.43 (g): closure, post-closure, and financial requirements.

3) Use the standards for large generator storage presently contained in the proposed 40 CFR Part 266.41 (c) (which includes standards for facility management such as requirements for personnel training, emergency procedures, and arrangements with local authorities) in place of the proposed 40 CFR Part 266.43 (c), (d), and (h) for burners of off-specification used oil.

4) State explicitly in the rules that the burners of used oil do not have to reanalyze the oil fuel if they are provided the results of analysis sufficient to satisfy the proposed 40 CFR Part 266.43 (b) (1) by the blender or processors.

Standards for Small Generators.

The DEQ agrees that the requirements for small generators of used oil should be kept to a minimum. We find the regulations in the proposed 40 CFR Part 266.40 (c) to be appropriate, although as discussed below, we disagree with the specific level proposed limiting the accumulation of used oil that can be regulated as "small generator recycled oil".

Standards for Generators.

In Oregon, we generally have not had significant incidents of environmental damage stemming from mismanagement of used oil by the generators. Undoubtedly in the past a number of generators have mixed chlorinated solvents and other toxic materials with their used oil. However, with the increased regulation of hazardous waste, this mixing problem has diminished. It should strongly diminish further if the proposed regulations for transporters and processors are implemented, since both would have strong incentives to refuse to collect oil that a generator has mixed with hazardous waste, and so the generator will also have a strong incentive to not mix hazardous waste with the used oil."

Some aspects for the standards for generators will, however, strongly discourage service stations and other generators from accepting household generated used oil, thus increasing the risk to human health and the environment by increasing the amount of household used oil dumped indiscriminately or otherwise disposed of instead of recycled. This comes about by the combination of:

1) regulating household oil when accumulated for recycling,

2) having the oil collected from households included when the determination is made as to whether a business is a small generator or a fully regulated generator of recycled used oil, and

3) strict standards, including daily monitoring of tank equipment and above ground portions of tank systems.

Changes in any one of these three factors could remove the disincentive for businesses to collect and recycle household oil.

The following changes are recommended:

1) Exempt household generated used oil from the quantity determination under the proposed 40 CFR Part 266.40 (c).

Including household oil in the quantity determination could cause some small generators who serve as used oil collection depots to exceed the limits and to become fully regulated as large generators. This would be a major disincentive for small generators to receive and recycle household-generated oil if the generator is already near the limit.

2) Set the limit for recycled oil in gallons rather than kilograms.

Oil is generally measured in gallons, and it would be very difficult under most circumstances to accurately measure the weight of the oil. In addition, measuring recycled oil in gallons instead of kilograms would help reduce the confusion by emphasizing that recycled oil does not count towards the limit in 40 CFR Part 261.5 between small generators and fully regulated generators of other hazardous waste. Either a 300 or a 600 gallon per month limit (1,000 or 2,000 kilograms/month as discussed by EPA in the preamble) seems appropriate.

3) Set the limit regarding accumulated recycled oil at 600 gallons.

According to 50 FR 49224-49225, EPA based its estimate of how many establishments would be fully regulated as generators of recycled oil just on the rate that they generate the oil. The DEQ believes that if present oil collection practices were to continue, this strongly underestimates the number of regulated generators, as many establishments generate less than 1,000 Kg/month (300 gallons/month) but accumulate more than that before the oil is collected for recycling. Data presented by two local collectors indicates that nearly a thoird of the tanks in service for used oil hold approximately 500-600 gallons, but that most users of these tanks generate much less than 300 gallons of used oil per month. Thus, unless the users of these tanks have their oil picked up and recycled when the tank is only half-full, they would be regulated as full generators. If the generators have their oil collected more frequently in order to avoid full regulation, this will substantially increase the cost of oil collection and decrease the price (or increase the cost) that collectors pay (or charge) to collect and recycle the oil. This increase in cost would be a further disincentive to generators or small generators collecting household oil for recycling.

Standards for Transporters

Because of the Oregon Opportunity to Recycle Act, Oregon has "on-route" recycling programs that collect oil (and other recyclables) from both small businesses and households. For the most part, the operators of these recycling collection programs are garbage haulers who pick up small quantities of used oil from households and small businesses along with other source-separated recyclable materials. These programs differ from the usual oil collector operations, in that they do not pay or charge for the oil, and only collect oil in small quantities. They instead are more closely analogous to oil-recycling depots or oil generators, except that transportation is provided by the recycler rather than by the household or small business.

The proposed rule as published in the November 29th, 1985 Federal Register improved significantly on earlier drafts of the proposed rule in that household-generated oil being transported from households to collection centers is specifically exempted from the transportation standards. However, under these proposed rules as published, our on-route recycling collection programs could not feasibly pick up small quantities of oil from small businesses. If they did pick up any used oil from businesses, they would then have to meet the transporter standards, including the requirement to not store the oil longer than 10 days (or else also meet all of the oil processing facility standards). The DEQ does not believe that the rules adopted by EPA should discourage these recycling programs from offering free collection and transportation of small quantities of used oil.

One solution would be to modify the proposed 40 CFR Part 266.42 to allow oil recyclers who pick up small quantities of oil (less than 50 gallons from any single business establishment at any time) and take that oil back to their collection center to manage the oil as though they were the generator rather than the transporter of the oil. This would also reduce the record-keeping requirements concerning very small quantities of oil.

The DEQ does not see any particular reason why oil collectors should be required to transport their oil to a oil processing facility within 10 days or else have to meet all of the standards of a processing facility. A 30 day limit, in line with the limit on generators, seems more reasonable, provided that the transporters who store oil longer than 10 days at least provide the same management standards for storage as is required for generators.

Analysis and mixing rule problems.

One other concern/question that DEQ would like EPA to address is a practical problem oil processors presently face concerning the detection and management of oil that may contain very small concentrations of hazardous waste such as spent halogenated solvents. DEQ is not aware of any practical and accurate test for halogens that a collector or processor can feasibly administer in the field before accepting a quantity of used oil. Massive adulteration of oil with halogenated solvents can be detected by smell or by low flashpoint or viscosity, but concentrations of solvents on the order of 1,000 parts per million are difficult for collectors to detect at the generator's site without requiring laboratory testing of each generator's oil. Thus, in spite of the reasonable precautions and attempts to keep generators from mixing hazardous waste with used oil that a collector or processor may make, it is possible to unknowingly accept oil mixed with minute amounts of hazardous waste. If a collector or processor sends a sample to be analyzed at a lab, and the results come back (after a week or two) showing that the halogen level is close to the 1,000 PPM level, the collector or processor would reasonably be expected to make further investigation as to the source of the halogen. This investigation might reveal that somewhere, some small generator mixed a small quantity of spent halogen solvent with his or her oil. By the mixing rule then, all of the oil mixed with this oil is now hazardous waste, including all of the oil in the processor's full accumulation tank. This is true even though the oil in the accumulation tank may meet all standards for specification fuel. The large processors in Oregon all use heat to drive off water and "light ends" (which would include halogenated solvents). However, if the collector or processor is not authorized to handle hazardous waste, then this handling and treatment would not be authorized and the oil must all be shipped off site at great expense. Even if the collector or processor was authorized to handle other hazardous waste, the oil that has been heat-treated and thus contains virtually no halogenated solvents would still be classified as hazardous waste and would be ineligible to be sold as specification fuel unless the collector or processor can have the oil delisted (a lengthy procedure).

The changes in the mixing rule that EPA proposes in the "listing" rule will further aggravate the problems described above faced by collectors and processors, since oil mixed with small amounts of "characteristic" waste or small generator waste would still need to be treated as hazardous waste and would be ineligible for the special management standards EPA is proposing for used oil. This is true even if the waste would not normally be considered hazardous except for showing the characteristic of ignitability, and even if the resultant mixture does not show any of the characteristics of hazardous waste. DEQ does agree with EPA that the regulations promulgated should strongly discourage the mixing of hazardous waste with oil. However, DEQ would like EPA to address the problems described above in the final rulemaking.

APPENDIX G.--PREPARED STATEMENT OF TERRY WESTHAFER, PRESIDENT, AMERICAN RETREADERS' ASSOCIATION

The American Retreaders' Association applauds this subcommittee for holding hearings on this issue and appreciates the opportunity to submit comments expressing the concerns of independent retreaders and tire dealers regarding the proposed EPA rules and congressional activity dealing with the recycling of used oil. ARA is a national nonprofit trade association representing over 1700 members located in 50 states who are engaged in the retreading and repairing of tires, and the sale of related products and services. Many of our members service their own vehicles and/or operate service bays and are engaged in the servicing of automobiles and trucks, including the changing of motor crankcase oil and oil filters.

ARA believes that the proposed EPA rules listing used oil as a hazardous waste under RCRA and congressional efforts to include used oil in the Superfund bill could in fact lead to more environmental contamination and drastically increase the amount of hazardous waste generated.

The legislative history of this issue is clear that Congress intended to protect and encourage the recycling of used motor oil. In a colloquoy on the Senate floor July 25, 1984 between Senator Paul Sarbanes (D-MD) and Senator John Chafee (R-RI), Mr. Chafee, Chairman of the Subcommittee on Environmental Pollution of the Committee on Environment and Public Works, stated:

> While there have been some isolated problems, in general the waste oil industry has demonstrated how a potentially hazardous substance can be safely collected and profitably recycled into new, useful products. We do not want to upset an industry that already is doing voluntarily what we are now requiring others to do.

The Used Oil Recycling Act, authored by Congresswoman Barbara Mikulski (D-MD), directed the EPA to promulgate regulations to encourage "the significant energy savings that would result from increased recovery and recycling of used lubricating oil." (H.R. Report No. 96-1415, September 26, 1980, p. 4)

In its report, the Energy and Commerce Committee recognized that "with over one billion gallons of used oil produced annually, the recovery and collection process for used oil is a critical aspect of achieving full conservation of this valuable resource, as well as preventing its improper disposal."

EPA and Congress must consider the consequences of implementing their proposals and efforts. Failure to apply the recycling intent down the chain of distribution will result in the collapse of the recycling efforts. Protectionism aimed at dealers and retreaders alone will not suffice if protections are not passed down the chain of distribution. Any proposal that results in 500 collectors going out of business also results in a drastic change in the way this product is marketed.

One can recycle only that which can be sold or reused. A market must exist. Demand for recycled oil is influenced by the availability and price of virgin oil and the industry's overall ability to use those materials. Thus, if used oil is not price competitive with virgin oil, the market will disappear.

Reducing the number of collectors will increase the cost of transportation. Regulatory changes would upset the expansion of this recycling program.

This small business recycling program, which has been extremely successful, is in jeopardy. Dealers who had been paid 40¢-60¢ a gallon for used oil in December 1985 now are paying as much as $90.00 every 3 months to have their tanks emptied. Not only will this discourage properly recycling the products, dealers are becoming more and more reluctant to collect used oil from do-it-yourselfers.

ARA thus urges this Subcommittee to closely monitor the activities of EPA and of the Superfund conferees to ensure that used oil is not listed as a hazardous waste. The result would be to jeopardize the existence of a recycling industry that Congress has historically sought to protect.

APPENDIX H.--PREPARED STATEMENT OF THE AMERICAN METAL STAMPING ASSOCIATION

The American Metal Stamping Association (AMSA) is a national trade association with over 1,000 member companies representing the producers of metal stampings, fabrications, spinnings, and related products in North America.

Nearly all member companies are small businesses averaging 80 employees. The entire industry has some 280,000 employees.

Metalforming companies are typically independent contract manufacturers of component parts produced to specifications of industrial customers. Some produce end-products. However, most are "sub-contractors" to an enormous variety of large manufacturers who assemble and market the finished products.

Major customers include the aerospace, appliance, automotive, construction equipment, electronics, farm implement, nuclear and transportation industries. Annual sales volume of the metalforming industry is estimated to exceed $21 billion.

USED OIL LISTED AS A HAZARDOUS WASTE

Metal stampers often apply a thin film of lubricant on sheets or coils of metal before processing. The lubricant serves to extend die life, and acts to provide proper frictional coefficients needed to form metal. Lubricants would typically not be contaminated during the stamping or forming process.

After processing, as much as one-third of the original metal may remain as scrap. The material is sold to scrap dealers for eventual recycling. The thin film of lubricant remains on the scrap material when it is sold.

Metalforming companies use a wide variety of lubricants. Most of the lubricants would meet the EPA's definition of used oil. Lubricants used by the industry include: motor oil, cutting oil, drawing compounds, animal fats and special soaps.

Thin Film of Oil on Metal Scrap

The most important issue affecting the metalforming industry in regards to the proposed listing of used oil as a hazardous waste, is whether scrap metal, covered with a thin film of oil, is subject to full regulation by the EPA under 40 CFR Parts 261-265, 124, and 270. If it is, there would be severe consequences.

Full regulation of scrap metal coated with a thin film of lubricant would:

- Significantly increase the number of regulated hazardous waste generators. There are over 3,500 metalforming companies in the United States.

  Virtually every metal working small business would be subject to the Large Quantity Generator regulations. This regulation was intended for large companies generating large amounts of hazardous wastes. Not small businesses selling scrap metal.

- Significantly decrease the amount of recycled metal (All scrap would have to be manifested and transported to an EPA approved Treatment Storage Disposal facility);

- Increase the risk to the environment by subjecting it to metals which would otherwise be recycled; and

- Impose significant economic hardship on the metalforming industry, without benefit. Based on AMSA surveys, the typical metalforming company has a before-tax profit margin of 4.3 percent. Surveys also indicate that sale of scrap accounts for some 20% of profits. Full regulation would not only cause a loss of scrap profits buy also add significantly to overall costs because the industry would then have to pay to dispose of scrap material at EPA-approved facilities.

We have asked the EPA to elaborate on its intention to subject scrap metal to full regulation. We ask the subcommittee to use its oversight power to further explore EPA's intention on this issue.

EPA's Rebuttable Presumption for Recycled Oil

The EPA plans to fully regulate (subject to 40 CFR 261-265, 124, and 270) used oil intended for recycling which is mixed with hazardous waste. AMSA has no problem with this proposed regulatory concept. In fact, we would agree that used oil mixed with hazardous waste poses a threat to the environment and should be fully regulated. However, we are concerned about the method in which the EPA plans to assume the used oil has been mixed.

Many oils used by the metalforming industry may contain non-hazardous chlorinated paraffins. Chlorinated paraffins are typically added so that the oil may be subjected to extreme pressure. Chlorinated paraffins are non-toxic and pose no environmental danger.

EPA assumes that all used oil containing more than 1,000 parts per million (ppm) of total halogens has been mixed with a hazardous spent halogenated solvent. That is not the case with oils blended with chlorinated paraffins. These oils show a high halogenated content even though they have not been mixed with any hazardous spent solvents whatsoever. AMSA is concerned that a significant portion of the oil used in our industry (blended non-hazardous chlorinated paraffins), will become fully regulated even though no mixing with hazardous solvents has taken place.

In fact, the Agency is aware of this problem. It states in the proposed Recycled Used Oil Standards (50 FR 49218) that: "metalworking oils may contain high levels of halogens but have not been mixed". The only solution EPA offers for this potential misclassification of certain oils is a provision for companies to rebut the mixing presumption. This is unlikely to occur, since EPA proposes no procedure for rebutting the presumption.

This complicates the regulatory environment for the metalforming industry. We are concerned that the EPA's test to determine mixing is not accurate and will cause further frustration, cost, time, and regulatory burden.

Quantity Determination

EPA's proposed recycled used oil regulation would require the counting of used oil generated in a given month in order to determine which regulations would affect a given site. Those generating 1,000 kilograms or less would be subject to less stringent regulations as compared to those who generated over 1,000 kilograms.

Regulations affecting large quantity used oil generators are numerous and include filing for an EPA identification number, designating an emergency coordinator, arrangements with local authorities, posting information, emergency procedures, and personnel training. While questions of interpretations arise under each provision, we are concerned that small quantity generators may periodically exceed the quantity limitations and therefore become subject to the large quantity generator used oil regulations.

As recycling companies become subject to increased regulation and permitting, the number of recyclers can be expect to decline. We are concerned that many small business will face increasing difficulty in finding a permitted recycling facility, as those facilities remaining in business opt to contract with large quantity generators due to their volume. Small quantity generators are likely to be forced to accumulate their oil until an amount attractive to a recycler is stored. By doing so, the 1,000 kg limit is certain to exceeded, thereby subjecting these small quantity generators to the more costly and cumbersome large quantity used oil regulations.

Mixture of Spill Control Materials

Mixture of spill control materials with used oil would subject the mixture to full EPA regulation. AMSA does not agree with the EPA that spill control materials used to absorb de minimus losses of oil occurring during normal operations should be subjected to full regulation.

Virtually every metalforming company uses spill control materials for the purpose of absorbing losses of metalforming fluids caused by small spills, leaks or drippings during normal operations. The de minimus spills are cleaned at the time of occurrence for obvious safety reasons.

Many spill control materials used by metalforming companies are sorptive minerals (i.e. clay). The Sorptive Minerals Institute testified before the EPA and stated: "when clay bearing oil is disposed of in conventional solid waste landfill, the used oil remains absorbed in the clay and within the landfill and there is no material risk that any toxics contained in used oil will be released".

We can see no benefit in subjecting spill control materials to regulation as a hazardous waste. Our members are concerned that the land available for disposal of hazardous wastes is shrinking and the ability to find cost effective hazardous waste disposal has been impacted.

The Regulatory Impact Analysis (RIA IV-13)) and Background Document prepared for the proposal to list used oil, assumed that the cost of disposing of a drum (55-gallon) of used oil at a RCRA-approved hazardous waste facility would be $41.25 per drum or $.75 per gallon. However, this estimate is severely understated. Currently, AMSA members on a preferential basis pay $170.00 per drum for transportation and disposal or about $3.09 a gallon over 4 times the current EPA estimate.

The Sorptive Minerals Institute testified that a drum of mineral clay which has been used to clean up used oil contains approximately 4.5 gallons of used oil not 55-gallons. Taking our per-drum cost of $170.00, the cost of disposing of used oil absorbed in mineral clay is approximately $37.00 per gallon. More than 50 times the EPA's estimate!

With no environmental risk associated with clay materials mixed with used oil (when disposed as a regular waste system), we cannot understand why the EPA would subject small businesses to these substantial costs.

General Comments:

In 1980 Mercury Metal Products (a very typical industry company), had sales of approximately $6 million, 120 employees, and profits of $400,000. In 1985, they had sales of $3 million, 70 employees, and profits of $60,000. As this example shows, increasing foreign competition as well as the increased cost of complying with federal regulations is doing grave damage to the domestic metalforming industry.

This industry cannot continue to be competitive in the world market if the ever-increasing burden of new federal regulations is not limited. This year alone, we expect five new major federal regulations to impact the metalforming industry. We cannot continue to pay these social costs while our foreign competitors pay nothing and continue to undercut our prices.

AMSA sympathizes with EPA's position. Congressionally mandated requirements in the Used Oil Recycling Act, and Section 3014 of Subtitle C of the Resource Conservation and Recovery Act, forced EPA's position. However, the EPA was instructed in section 3014(a) to analyze the economic impact on the recycling industry and to further ensure that the regulations not discourage the recovery or recycling of used oil.

We also sympathize with Congress. Well-meaning environmental interest groups have placed the Congress in the unenviable position of voting for these laws, no matter how self defeating they actually are.

We encourage the subcommittee's efforts to examine the ramifications of the EPA proposed Identification and Listing of Waste; Used Oil and Recycled Used Oil Standards. We hope that any legislation eminating from this hearing reflects the true costs of these regulations.

APPENDIX I.--ADDITIONAL COMMENTS BY ROBERT V. RUSK, CHEVY CHASE EXXON, CHEVY CHASE, MD

United States House of Representatives
Committee on Small Business
Subcommittee on Energy, Environment, and Safety Issues Affecting Small Business
B-363 Rayburn House Office Building
Washington, D.C. 20515

June 17, 1986

Gentlefolk:

I have recently recognized that EPA's proposed waste oil regulations will almost certainly create a third as yet unmentioned category of waste. I would call it Rebuttal Mandatory Waste. The refrigeration industry provides a good example of this category, so follow me through an hypothetical example.

Assume a refrigeration contractor 'takes down' a large food processing machine in the approved way. He pumps the listed hazardous waste refrigerant out and cold-traps it as required by EPA, and then drains the used oil out. This used oil will contain halogens at a level greater than 1000 ppm and less than 4000 ppm. As refrigeration oil it is clearly and necessarily contaminated by use, and by use only. Further, the recovered and cold-traped refrigerant, although listed, is not waste because it is entirely suitable for continued use. Therefore the oil has demonstrably not been mixed with hazardous waste yet would be hazardous by rebuttable presumption of such mixing while not hazardous by characteristic.

Now, as we have discussed, there are insurance and image problems associated with generating hazardous waste which would be particularly sensitive in the food industry. What ice-cream manufacturer wants some overzealous consumer advocate type to blare to the press that the ice cream is made in a plant that generates hazardous waste?

So, what to do? In this case the answer appears to be to retain witnessed and documented sealed samples of the waste for independent analysis and send the documentation and reports on each batch to EPA to force EPA to accept rebuttal in advance instead of waiting for the normal after-the-fact rebuttal that we are more used to considering. This 'cover your fanny' approach could end up being more expensive than hazardous waste disposal in the short term yet much more cost effective both long term and overall because of the escape from superfund liability, insurance, and permit requirements.

Further, it creates that third unadressed category of used oil waste that EPA has not addressed in its Regulatory Impact Analysis while drowning EPA with paperwork it cannot handle and forcing its hand by requesting pre-emptive rebuttal. EPA will have to respond to a 'have you stopped beating your wife?' sort of question to which it must answer to its detriment.

I am sorry that I have been unable to research this beyond this very preliminary stage, but I'm sure that this technique would catch on if EPA's final waste oil rules are considered onerous and retain rebuttable presumptions. I think it could extend right down to the individual automotive repair establishment level if the need is perceived.

Thanks again for your interest,

Robert Rusk

Robert Rusk

OCSSDA

Ohio C erence
Of Service Station Dealer Associations

7870 Olentangy River Rd. Suite 208 / Worthington, Ohio 43085
(614) 885-2373

- Columbus
- Cleveland
- Cincinnati
- Dayton
- Toledo

David J. Pickney,
Legislative Director

RECEIVED
MAY 1 2 1986

RESOLUTION

WHEREAS, the Ohio Conference of Service Station Dealer Associations (OCSSDA) is a broad-based organization of independent service station operators throughout the State of Ohio; and

WHEREAS, it came to the attention of OCSSDA that approximately 350 million gallons of used crankcase oil are disposed of improperly each year; and

WHEREAS, OCSSDA determined that its members could help solve this problem by an organized effort to have motorists bring their used crankcase oil to service stations where it could be disposed of properly and safely; and

WHEREAS, OCSSDA's program has been effectively thwarted by the position taken by the United States Environmental Protection Agency that used crankcase oil should be considered a hazardous waste, for which service station dealers could be legally liable if disposed of improperly after the oil leaves the service station; and

WHEREAS, what began as an effort by OCSSDA to help with a national pollution problem, by encouraging service stations to accept used oil brought in by the general public, now poses unacceptable risks of liability and expense for individual service station operators,

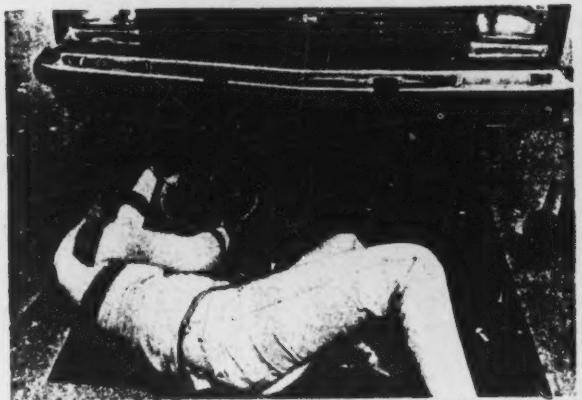
BE IT THEREFORE RESOLVED BY OCSSDA:

> That the United States Environmental Protection Agency be given notice that OCSSDA is advising all service station operators not to accept for disposal any used crankcase oil brought in by members of the general public, until amendments to law or regulations make it clear that these operators will not be held liable for ultimate disposal of the oil on the theory that it is a hazardous waste.

OHIO CONFERENCE OF SERVICE
STATION DEALER ASSOCIATIONS

David Pickney Attest: David J Pickney
(Chairman)

Do-it-yourselfers' dilemma—where to throw waste motor oil



BARBARA BOWLEY, a student counselor at Lakewood High School, has been changing her own crankcase oil since 1972. It was a matter of economic survival, she says, and changing two or three times a year makes her cars "run forever." That's her 1981 Chevette she's servicing. She did the same thing with her previous car, a Pinto.

DRAINING and catching the used oil is no big deal if you know what you're doing, Bowley says. You need a pan to drain it into and a container that will hold several quarts.

USING A FUNNEL is a necessity for the transfer to a large container which will allow you to carry the used crankcase oil conveniently after you've made the change.

NOW, WHAT do you do with the stuff? For the first year or two, Bowley dumped her used oil down sewers. Then she discovered facilities which will take used oil.

THIRTY-NINE PERCENT of American motorists change their own crankcase oil these days. And that raises the question of what to do with the used oil.

Do you dump it out in some back lot? Do you pour it down a drain?

The U.S. Environmental Protection Agency claims 350 million gallons of used oil is dumped out annually and that that is contaminating our water supplies.

To encourage motorists in northern Ohio to dispose of their used oil in a more desirable way, Speedy Oil Services Inc., and K-Mart Discount Stores have launched a project called POUR—Program of Used Oil Recycling.

In brief, K-Mart stores that have automotive service centers will accept a container of used oil a person brings in, and Speedy Oil will pick up the oil on its regular collection stop at the store.

"We pledge that all of the oil we collect will be used for some good purpose," Bruce McFadden, supervisor of Speedy's operations in northern Ohio, told Ohio Motorist.

"We re-refine all of our used oil and market it as lubrication oil for factories, new motor oil, hydraulic oils and diesel fuel," he said. "We don't sell it to people who are likely to pour it along dirt roads to settle dust or to burn it in boilers."

Speedy Oil and K-Mart stores think of the POUR project as a goodwill service to the public. There are 31 K-Mart stores with auto service centers in northern Ohio.

K-Mart stores will distribute a brochure that explains the POUR project. Other stores that sell motor oil to motorists are welcome to display the brochure, too. Supplies will be made available to them.

Some other companies currently will take used oil from the do-it-yourselfer—Sears stores and Sohio's company-operated, full-service stations, for examples. Sohio credits any oil it collects to the Muscular Dystrophy Association, Northern Ohio Chapter, but Sohio and MDA spokesmen confess that their program hasn't raised any money for MDA recently.

Enthusiasm for collecting used oil has been dampened by two recent developments:

•**THE PRICE** of a gallon of used oil paid to companies that accumulate it by collectors like Speedy Oil has plummeted from 35 cents, when petroleum prices were sky high to five cents today, because of the oil glut. And some collectors are charging five or six cents a gallon to haul it away from service stations, auto agency service departments and repair garages.

•**THE U.S. EPA** is in the process of declaring used oil a hazardous waste because motorists sometimes mix it with paint thinner, pesticides or other unwanted liquids they have around the house. If EPA's regulations become too tough, used oil will have to be disposed of as hazardous waste—with all of the paperwork and added costs that that entails.

George Pastor, executive director of the Northern Ohio Petroleum Retailers Assn., told Ohio Motorist his organization (the independent service station owners) was all set to participate in Project POUR, but he was advised by NOPRA attorneys that disposing of the additional used oil might be costly for the service stations.

He also raised the question of liability. If the U.S. EPA holds service stations liable for any pollution or damage caused by the discarded used oil, that could be an undesirable risk and might bring costly damage suits.

The Car Care Council, based in Detroit, surveyed a nationwide consumer panel of 2,000 motorists to determine that 39% of car owners change their own oil. Service stations accounted for the next largest percentage—17% of the oil changes.

Bob Staib, education director for the Council on Hazardous Materials, a non-profit community information agency funded by the Cleveland and Gund Foundations and the U.S. EPA, likes the POUR project. His organization is providing a "hotline" telephone number—216/961-4646—to inform motorists where the nearest K-Mart auto service center is.

"Recycling used oil properly is important," he said. "The current low prices and the EPA regulation problems are short-term obstacles. Once things settle down, I will be very gungho about POUR."

Staib said he isn't sure service stations should be lumped in with companies that generate larger amounts of hazardous wastes.

"It's not clear to me that they are the same, especially if the service station sells its used oil to a re-refiner," he said. "Then it's not a hazardous waste.

"A service station operator knows what's in his tanks and probably can keep hazardous materials out by restricting his tanks to do-it-yourselfers who bring in a few quarts of oil. He should be suspicious of a guy who brings in a 55-gallon drum."

THE K-MART auto center at 30010 Detroit Rd. in Westlake, like all K-Mart auto centers in northern Ohio, accepted Bowley's used oil as a service to her and as a good deed in protecting the ecology. The project is called POUR — Program of Used Oil Recycling.

APPENDIX J.--ADDITIONAL MATERIAL (LETTERS) SUBMITTED BY RALPH G. HIGGINS, JR., VICE PRESIDENT AND GENERAL MANAGER, STATEWIDE WASTE OIL & CHEMICAL CO

C & M OIL DISTRIBUTORS, INC. OF S. C.
RECYCLING ENERGY
Box 30322
Charleston, S. C. 29417
(803) 766-5302

Our company has been in the oil collection business for over three (3) years. We are a continuing company arising from one established in 1974. Last year our company collected over a million gallons of oil for shipment to a reprocessor for energy.

The proposed E.P.A. regulations are a definite threat to our continued operation. We do not have the expertise or the laboratory facilities to comply with the proposals. The market place will not support or pay the charges that will be inherent with the regulations. We have discussed the regulations with our customers. Their reactions are wide ranged from unbelieving to uncaring. When they were informed of the possible costs of tests prior to removal of their oil, they stated they will never pay. Others state they will dispose of it through their own efforts. There are those that state they will find the illegal collector to fill their needs.

The South Carolina Department of Environmental and Health Control in March of 1980 implemented regulations that classified recyclable oil as "hazardous." This was done by unknowing and uncaring personnel. Their desire was to establish bureaucracy. The classification "hazardous" if continued is going to create havoc with the environment and ecology in South Carolina. The classification "hazardous" will probably put us out of business. Our insurance carrier has informed us that they will not renew our coverage. We have been trying to find coverage as required by D.E.H.C. and we have failed. The coverage we have found is of such cost that we cannot afford it.

If E.P.A. adopts regulations that classify recyclable oil as "hazardous" it will be the "kiss-of-death." Surely there must be personnel in this agency that can foresee the impact such a classification would have. On one hand, E.P.A. has the charged responsibility of protecting the environment and ecology, and on the other they wish to adopt regulations that will be self-defeating. Under the Graham, Rudman and Hollings Budget Restraints where will they get the funds to police and enforce the regulations?

South Carolina's classification of "hazardous" was predicated on a viable recycled oil market. The generator would save and collect oil as it had a monetary and market value. The present existing conditions in the new oil market makes it impossible for a collector to pay for oil. The incentives are gone for the generator. They are faced with the possibility of paying for oil disposal. They will not pay and will seek and find illegal ways to dispose of oil. The legal collector will not be in business because of the "hazardous" classification. The oil will end up in the environment.

The recycled oil business is a viable part of the economy of this country. Every gallon recovered and used for energy is one less gallon imported. During the oil embargos we were encouraged by the Department of Energy to make every effort to recover recyclable oil for energy conservation. We were encouraged by them to establish pick-up points for do-it-yourself'ers. They attributed millions of gallons of oil disappearing from the economy to this endeavor. They spent millions of the taxpayers dollars to promote the recycled oil business. Have we reached a point in this country where oil conservation programs are no longer necessary? Why were the conservation programs promoted by the Department of Energy beneficial to the economy at that time and today in eyes of another agency "hazardous?" It seems to us that this, once again, is the federal bureaucracy not knowing what the other is doing or the desire of a regulatory agency to build an even larger bureaucracy. The inevitable result is the country will suffer in any event. The recycled oil business should be encouraged, aided and abetted by the Federal Government, not stifled and strangled by the desire to build additional regulatory agencies. Congress should take the necessary legislative action to prohibit recyclable oil from being classified as "hazardous" by E.P.A. or any state government. The Department of Environmental and Health Control of South Carolina would probably like to retract the "hazardous" classification if it could be done gracefully.

Do not compound the error nationally that has been committed in South Carolina. The environment and ecology will suffer irreparable damage. There will be an increase in the cost of energy in the economy. The impact on the overall economy will be added cost to doing business. The general public will end up paying the costs to support additional regulatory bureaucracy. Those companies surviving these regulations will be tied up in filing reports. The recycled oil companies do not have the profit revenues of the major oil companies to oppose such regulations. We can only hope that someone can foresee the dire effect the proposed regulations will have on the general public.

D. F. Hurst
President

HOLSTON ENERGY INC.

May 12, 1986

Statewide Waste Oil & Chemical Company
P. O. Box 5503
Spartanburg, S.C. 29304

Attn: Mr. Ralph Higgins

Dear Ralph:

I write in reference to your request for information concerning the implications of the reclassification of used oils as hazardous waste.

In lieu of the fact that we are dealing with so many unknowns, I feel my comments will be somewhat general and more than likely reflect the views of any responsible businessman in the oil recycling business. As the proposed regulations now stand, we feel that the costs will be prohibitive and in several situations impossible to retrofit our physical plant to hazardous waste standards. Although we do pride ourselves in having an extremely clean terminal for the type of business we are in, I feel as though it will be next to impossible to keep it as clean as what will be required by the new restrictions for the handling of hazardous waste fuel. The only thing that I can say about liability insurance is that it will be much more difficult for us to afford if at all we are able to find it.

My final comment will be in regards to customer reaction as well as the local public reaction to a hazardous waste oil site in the community. I wish to reference Mitchell Systems in the northern section of our state who has basically been forced out of business due to the unavailability of reasonably priced liability insurance as well as local reaction to his type of operation.

Ralph, it is our sincere hope that EPA follows a logical course of action as far as regulating used oils as hazardous waste. If there is no reasonable end-user market for this product then the recycling industry is dead. We at Holston do wish you the best of luck in Washington and if there is anything further that we can provide you with, please do not hesitate to contact me.

Best regards,

Eric L. Helquist
Vice President

ELH/pat

PO BOX 720 WAYNESVILLE, NC 28786
704 452 2836 / NC 800 222 4525 / 800 222 4530

CR

COASTAL REFINING CORPORATION
2830 TREMONT ROAD
SAVANNAH, GEORGIA 31405
(912) 233-9999
E.P.D. PERMIT 025-032P (RM) (I)

May 12, 1986

Ralph G. Higgins, Jr.
V.P. Statewide Oil & Chemical
P.O. Box 5503
Spartanburg, S.C. 29303

Dear Mr. Higgins,

In the recent view of the EPA's final & proposed rulings of the use of used oils, may I reflect the following:

This business was originally established to reroute this country's petroleum wastes products into a profitable & useful product. This inturn would not only help reduce our industry's cost of production but would also alleviate any enviromental damage both for now and in the future generation. This can be done very efficiently under certain guidelines to benefit all, but under existing & proposed rules this has become more out of focus. In short there is no incentive to reuse or redirect these wastes into a worthwhile use, but only to dispose for problems in the future.

On a second note, with this country's dependency on world oil this would be an excellant oppartunity to put energy awareness programs to work and allow a reusable source of energy to be used to its extreme.

It is my view that the EPA's existing and proposed rules should be reviewed with more thought on this countries needs. Without some change in the same a serous crisis is certainly in our very near future.

Sincerly,

R.L. Glendye
Coastal Refining Corp.